

## **SCHEDULE B – GENERAL CONSTRUCTION TERMS AND CONDITIONS**

### **GENERAL CONSTRUCTION TERMS AND CONDITIONS**

#### **SECTION 100      DEFINITIONS AND TERMS**

Titles used in these specifications having a masculine gender, such as “workmen” and the pronouns “he” or “his”, are for the sake of brevity and are intended to refer to persons of any gender.

The titles or headings of the sections and subsections herein are intended for convenience of reference and shall not have any bearing on their interpretation.

When the Contract indicates that something “shall” be done, the action is required and is not discretionary.

Calendar Day	Each and every day shown on the calendar, beginning and ending at midnight.
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Change Order	A written order issued to the Contractor by the City covering contingencies, extra work, increases or decreases in Contract quantities, and additions or alterations to the plans or specifications, within the scope of the Contract, and establishing the basis of payment and time adjustments for the work affected by the changes. The Change Order is the only method authorized for changing the Contract.
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City	The City of Colorado Springs, Colorado.
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Contract Documents	Contract Documents include the Request for Proposal, Instructions to Offerors, Proposal, Amendments, the signed Contract, surety bonds, insurance documents, all terms, conditions, and provisions, and the Specifications, including all modifications thereof incorporated in any of the documents before execution of the agreement.
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Contract	The executed written agreement between the City and the Contractor setting forth the obligations of the parties for the performance of the work and the basis of payment. The Contract includes the Contract Documents, Notice to Proceed, and executed Change Orders, all of which constitute one instrument.
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Contractor	The person, persons, firm, or corporation to whom a Contract is awarded by the City and who is subject to the terms of said Contract. Contractor shall include the agents, employees, workmen, subcontractors and any assignees of said Contract.
Engineer	An engineer of the City of Colorado Springs.
Notice	Any written notice served pursuant to the terms of the Contract. Notice shall be deemed to have been duly served if delivered in person or by registered mail to:  The Project Manager assigned to the Contract, City of Colorado Springs, City Engineering, 30 South Nevada Ave., Room 403, Colorado Springs, CO 80903.  Notice to the Contractor will be to the Authorized Representative of the Contractor at the site of the Project in person; or by registered mail to the Contractor's principal place of business as indicated in the Contractor's proposal certifications; or as to the Surety on the performance bond by registered mail to the Surety at the home office of such surety.
Plans	The drawings, or reproductions, provided by the City that show the location, character, dimensions, and details of the work to be done.
Project Manager	An individual representing the City responsible for managing and oversight of the Contract. .
Project	The entire improvement outlined in the Scope of Services which is to be constructed in whole or in part pursuant to the Contract.
Subcontractor	A person, firm, or corporation, other than the Contractor, supplying labor or materials, or both, or equipment furnished at the site of the project under an Agreement with the Contractor.
Surety	The person, firm, or corporation that has executed as surety the Contractor's Proposal, Performance, Payment and Maintenance Bonds.
Work	Work performed under the Contract.

Working Days

Days of the week, not including weekends and City holidays, unless otherwise stated.

## **SECTION 101      CONTRACT DOCUMENT INTERPRETATION**

### **101.00      INTENT OF CONTRACT DOCUMENTS**

The sections of the Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. The intent of the Contract Documents is to include the cost of all labor and materials, water, fuel, tools, plants, equipment, light, transportation, and all other expenses as may be necessary for the proper execution of the work. If the Contract Documents should be contradictory in any part, the order of precedence shall be as described in the Contract.

Any work shown on the Plans and not covered in the specifications, or included in the Specifications and not shown on the Plans, shall be executed by the Contractor as though shown both on the Plans and included in the Specifications.

If the Contractor, in the course of the work, finds any discrepancy between the Plans and the physical layout, or any errors or omissions in Plans or layout, he shall immediately so inform the Project Manager and the Project Manager will promptly verify them. Any work done after such discovery without written consent of the Project Manager authorizing the same shall be done at the Contractor's risk and sole expense.

Any incidental and/or appurtenant items not specifically called for in the Plans and Specifications, but which are necessary to complete the work in accordance with the requirements of good practice, as determined by the Project Manager, shall be included as a part of the Contractor's proposal price and furnished at no additional cost to the City.

In interpreting the Contract Documents, words describing materials or work which have a well-known technical or trade meaning, unless otherwise specifically defined in the Contract documents, shall be constructed in accordance with such well known meaning recognized by architects, engineers, and the trade.

### **101.01      SPECIAL PROVISIONS, SPECIAL SPECIFICATIONS**

Special Provisions or Special Specifications may be written to expand upon, modify or cancel these general provisions or the standard specifications.

## **101.02        STANDARD MANUFACTURER**

Wherever the terms "standard", "recognized" or "reputable" manufacturers are used, they shall be construed as meaning manufacturers who have been engaged in the business of fabricating materials, equipment, or supplies of the nature called for by the Specifications for a reasonable period of time prior to the date set for submission of proposals, and who can demonstrate to the satisfaction of the City that said manufacturer has successfully installed equipment, materials, or supplies of the type proposed to be furnished in at least three instances and that the performance of such materials, equipment, or supplies for a period of over twelve months prior to the date fixed for submission of proposals shall, prima facie, be deemed to have been engaged in such business for a reasonable length of time.

## **101.03        "OR EQUAL" CLAUSE**

Whenever in any section of the Contract documents, any article, material, or equipment is defined by describing a proprietary product, or by using the name of manufacturer or vendor, the term "or equal" if not inserted, shall not be construed in such a manner as to exclude manufacturers' products of comparable quality, design, and efficiency, subject to review and approval by the Project Manager. The Project Manager may require that proposed equals be submitted for review and approval.

## **SECTION 102        COMPLIANCE WITH LAWS**

### **102.00        PUBLIC IMPROVEMENT ASSESSMENT**

If the cost of the improvement to be constructed under the Contract is to be assessed upon the owners of land benefited by such improvement, upon complaint of any such landowner that the improvement is not being constructed in accordance with the Contract, the City Council may consider the complaint and make such order in the premises as shall be just to ensure compliance with the Contract.

### **102.01        ALL LEGAL PROVISIONS INCLUDED**

It is the intention and agreement of the parties to this Contract that all legal provisions of law required to be inserted, shall be and are inserted. However, if by mistake or otherwise, some such provision is not inserted, or is not inserted in proper form, then upon application of either party, the Contract shall be amended so as to strictly comply with the law and without prejudice to the rights of either party.

## **102.02        LICENSES AND PERMITS**

It shall be the responsibility of the Contractor to obtain, at its expense, all necessary licenses and permits to do the Project, in accordance with applicable Federal, State and local laws, regulations and ordinances. Typical permits and fees include, but are not limited to, Excavation/Boring Permits, Concrete Construction Permits, Fugitive Dust Permits, Regional Building Permits, Pavement Degradation fees, as well as Traffic Control and Barricade Plans to be approved by the City Traffic Division for all work within public rights-of-way and easements i.e. (curb and gutter, sidewalks, pedestrian ramps and cross pans).

## **SECTION 103        AWARD AND EXECUTION OF CONTRACT**

### **103.00        CONTRACT EXECUTED**

A single original Contract to include the Contractor's Performance, Labor and Material Payment and Maintenance Bonds may be executed and maintained in the official Contract file located in the City Contracts office. The original copy of the Contract maintained in the City Procurement Services file shall take precedence for purposes of interpretation or determining what the Contract says. After all required signatures are obtained; photocopy counterparts (copies) will be made and distributed to the following, as applicable:

- (a) Contractor
- (b) Project Manager
- (c) City Finance Department
- (d) Inspector

Each Bond shall have an original Power of Attorney attached. The Contractor shall provide compensation insurance and public liability and property damage insurance as outlined in the Contract. The costs of executing the bonds, Contract, and insurance, including all notaries' fees and expense, are to be paid by the Contractor to whom the Contract is awarded. Bonds shall be furnished on forms prepared by the City. Copies of the City's Bond Forms are included in the Exhibits Section of the Request for Proposal, if applicable.

### **103.01        VERBAL AGREEMENTS**

No verbal agreements or conversations with any agent or employee of the City either before or after execution of the Contract shall affect or modify any of the terms or obligations contained in any of the documents comprising the Contract.

### **103.02        CONTRACT SECURITY**

The Contractor shall furnish good and sufficient Performance, Labor and Material Payment and Maintenance Bonds on the form attached hereto in an amount not

less than the full amount of the Contract price as security for the faithful performance of the Contract, for the payment of all persons performing labor and furnishing material in connection with the work, and for all guarantees of materials and workmanship required in the Contract. If at any time during the continuance of the Contract a surety on the Contractor's bond or bonds becomes irresponsible, as determined in the City's sole and absolute discretion, the City shall have the right to require additional and sufficient sureties which the Contractor shall furnish within ten (10) days after written notice to do so. Any additional surety bonds shall cover the entire original Contract amount and any increases thereto.

### **103.03          INDEPENDENT CONTRACTOR**

In the performance of the Contractor's obligations under this Contract, it is understood, acknowledged and agreed between the parties that the Contractor is at all times acting and performing as an Independent Contractor, and the City shall neither have nor exercise any control or direction over the manner and means by which the Contractor performs the Contractor's obligations under this Contract, except as otherwise stated within the Contract terms. The City shall not provide any direction to the Contractor on the work necessary to complete the Project. Contractor understands that it is an independent contractor responsible for knowing how to perform all work or tasks necessary to complete Project. The Contractor understands and agrees that the Contractor and the Contractor's employees, agents, servants, or other personnel are not City employees. The Contractor shall be solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits or any other form of compensation or benefit to the Contractor or any of the Contractor's employees, agents, servants or other personnel performing services or work under this Contract, whether it be of a direct or indirect nature. Further in that regard, it is expressly understood and agreed that for such purposes neither the Contractor nor the Contractor's employees, agents, servants or other personnel shall be entitled to any City payroll, insurance, unemployment, worker's compensation, retirement or any other benefits whatsoever.

## **SECTION 104          THE CONTRACT: FOLLOWING EXECUTION**

### **104.00          MATERIALS**

Unless otherwise stipulated in the Contract, the Contractor shall provide and pay for all materials, labor, water, tools, equipment, light power, transportation, and other facilities necessary for the execution and completion of the work. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

## **104.01 SCHEDULE**

In the event of contradictions or inconsistencies, this clause shall take precedence over any language relevant to scheduling included anywhere else in this Contract.

The Contractor shall be responsible for planning, scheduling, and reporting the progress of the work to ensure timely completion of the work as called for in the Contract Documents. The Contractor shall prepare a detailed Project schedule ("Project Schedule") that shall be used for coordination, for evaluation of progress, and for the evaluation of changes to the Contract. The Project Schedule shall include all activities, including those of subcontractors, Contractor's engineers and surveyors, and suppliers. Seasonal and weather constraints, utility coordination, railroad restrictions, right of way restrictions, traffic constraints, environmental constraints, other project interfaces, expected job learning curves and other constraints shall be considered when preparing the Project Schedule, including any phasing or sequencing of the work specified in the Contract Documents. Days scheduled as no work days shall be indicated. The Project Schedule shall consist of a Methods Statement as defined in subsection (a) below and a progress schedule consisting of (1) a Critical Path Method ("CPM") schedule as defined in subsection (b) below, or (2) a Bar Chart schedule as defined in subsection (c) below. A CPM Schedule shall be required if the Contract exceeds \$250,000 or if the construction period exceeds 150 Calendar Days, unless the Contract Documents stipulate otherwise. The CPM Schedule shall utilize Primavera's Suretrak Project Manager software (or other software designated by the Project Manager), or be capable of being read and manipulated by Suretrak Project Manager software (or other software designated by the Project Manager). The Project Schedule shall show all work completed within the Contract Period of Performance. The City reserves the right to approve or disapprove any proposed schedule. If disapproved, the Contractor must make requested changes and resubmit the schedule for approval within five working days of the disapproval by the City.

After award, the Contractor shall submit two copies of all required schedule information as described below. Schedules, schedule updates, diagrams and reports using CPM shall also be submitted electronically in the appropriate software format. All schedules, diagrams, and reports shall include a title, project number, date of preparation, and the name of the Contractor.

The Bar Chart or CPM 90-day schedule shall be submitted at least 14 Calendar Days prior to the start of the work. The Project Manager's review will not exceed five working days. Work shall not begin until the Project Schedule is accepted in writing, unless otherwise approved by the Project Manager.

- (a) Methods Statement. A Methods Statement shall be prepared for the prominent features listed in the Contract Documents, and for any feature

not listed in the Contract Documents that the Contractor considers a controlling factor for timely completion. The Methods Statement shall be a detailed narrative describing each feature and all work necessary to complete the feature. The Methods Statement shall be submitted with the Contractor's schedule. The following format is required:

1. Feature: Name of the feature;
2. Responsibility: Contractor, subcontractor, supplier, utility, etc. responsible for the feature;
3. Procedures: Procedures to be used to complete the work. The procedure to be used shall include general information regarding methods such as forming, excavation, pouring, heating and curing, backfill and embankment, trenching, protecting the work, etc. When separate or different procedures are to be employed by the Contractor due to seasonal or Project phasing requirements, such differing procedures shall be described in the procedure statement;
4. Production Rates: The planned quantity of work per day for each feature;
5. Labor Force: The labor force planned to do the work;
6. Equipment: The number, types, and capacities of equipment planned to do the work;
7. Work Times: The planned time for the work to include:
  - (a) number of work days per week
  - (b) number of shifts per day
  - (c) number of hours per shift

At the Project Manager's request, the Contractor shall update the Methods Statement, or any part thereof, and submit it with the Job Progress Narrative Report or Schedule Update, whichever is earlier.

- (b) Critical Path Method. CPM is a scheduling method which shows the interdependencies between work activities. The critical path is that path through the schedule which, if delayed, will cause a delay to project completion.

The progress schedule shall include as a minimum the prominent features of this Project as listed in the Contract Documents. The progress schedule shall include all activities for all work on the Project, including subcontracted work, delivery dates for critical material, submittal and review periods, milestone requirements and no work periods. Where the



Project has specific phases, each phase shall be described separately for each applicable prominent feature.

Construction activity duration shall not exceed 15 Calendar Days unless approved by the Project Manager. Series of activities that have aggregate durations of five Calendar Days or less may be grouped in a single activity. For example, “form, reinforce, and pour pier” could be defined as a single activity rather than three. Single activities or a series of grouped activities of at least one Calendar Day duration may also need to be included in the Project Schedule as determined by the Project Manager (e.g. same activities but noted separately by location).

**Time Scaled Logic Diagram:** This diagram shall show the logical progression of all activities required to complete the work defined in the Contract Documents. Activity information shall include activity ID, description, duration, early start and finish dates, late start and finish dates, total float, and responsibility.

1. **90-Day Schedule.** The 90-Day Schedule shall provide all necessary detail for procurement, construction and submittal activities required during the first 90 days of the Period of Performance. This submittal shall include a Time Scaled Logic Diagram.
2. **Project Schedule,** as described above.

The Project Schedule shall cover the entire Period of Performance.

3. **Schedule Updates.** The Contractor shall update the 90-Day Schedule or the Project Schedule to reflect actual construction progress of all work activities on the project. Updates shall show the previous 30 days progress and a 60-day projection for all work started, completed, or in progress during this three month window.

The Project Schedule shall be updated as of the cutoff date for the monthly progress pay estimate and submitted to the Project Manager before the payment of the progress pay estimate is approved.

Each of the diagrams, charts, and reports shall comply with the requirements for the Project Schedule above, except that they shall also include the actual completion dates and percentages of completion for the appropriate activities.

- (c) **Bar Chart.** The Bar Chart shall be time scaled and shall show the following:

1. The prominent features, as listed in the Contract Documents.

2. Any feature not listed in the Contract Documents that the Contractor considers a controlling factor for timely completion.
3. The number of days required to complete each feature and its relationship in time to other features.
4. Sufficient space for each feature to permit two additional plots parallel to the original time span plot.
5. The anticipated delivery dates for equipment or materials in any feature that could affect timely completion of the project.
6. Critical completion dates for any activity within any feature that could affect timely completion of the project.
7. Connecting lines between features that show the intended progression of activities.

The Project Schedule shall cover the time from the Day of Notice to Proceed to the predicted completion date. The Project Schedule shall be updated as of the cutoff date for the monthly progress pay estimate and submitted to the Project Manager before the payment of the progress pay estimate is approved. The Contractor shall provide a copy of the original bar chart showing, for each feature, the days actually worked and the anticipated days required to complete.

- (d) Project Coordination. The Contractor shall coordinate and schedule its work to include anticipated utility work. Various City and private utility entities may be working to install and/or inspect their utilities within the Project area. Reasonable delays should be expected for utility lowering, relocations and placement. These delays shall not be reason for granting any monetary change or performance time alteration to the Contract. As a minimum, the Contractor's Project Schedule shall reflect coordination with the following:

1. City of Colorado Springs City Engineering Division
2. City of Colorado Springs Traffic Engineering Division
3. Colorado Springs Utilities (water, wastewater, gas, electric)
4. City of Colorado Springs Parks, Recreation and Cultural Services Department
5. Private Utility and Telecommunication Companies

(e) Contractor Early Finish or Voluntary Acceleration. Early finish or voluntary acceleration of the schedule by the Contractor is acceptable provided:

1. At the time the Contractor submits the Project Schedule indicating an early finish or voluntary acceleration, the City is notified in writing of actions on the City's part necessary to accommodate the change(s).
2. The City agrees to such change(s) in writing.
3. The City is compensated by the Contractor for any inconvenience or expense associated with the change(s).
4. There is no increase to Contract cost.

A Job Progress Narrative Report shall be submitted bi-weekly as a minimum and with all Project Schedule updates. It shall detail the description of job progress, problem areas, current and anticipated delaying factors and their anticipated effects, impacts to job milestones or Project completion, any corrective action proposed or taken, and any minor revisions to the Project Schedule. If the Job Progress Narrative Report indicates problem areas and impacts to job milestones or Project completion, a revised Project Schedule shall also be submitted as specified below.

Revision of the Project Schedule may be required, as determined by the Project Manager, for: a major revision in the schedule logic or methods of construction; the addition, deletion, or revision of activities required by Contract modification; delays in milestones or the completion of the Project; or for prosecution of work that revises the phasing or staging which is represented on the plans or on the progress schedule. If in the opinion of the Project Manager, the Contractor falls behind the approved Project Schedule, the Contractor shall take steps necessary to improve Project progress, including those steps that may be required by the Project Manager, without additional costs to the City. In those circumstances where the Contractor is behind schedule, the City may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction planned and to submit such changes and revisions to the Project Schedule to the Project Manager for approval that will demonstrate how the approved rate of required progress will be regained. Failure of the Contractor to comply with the requirements of the Project Manager under this subsection shall be grounds for a determination by the City that the Contractor is not prosecuting the work with sufficient diligence to ensure timely completion of the Contract as required.

If it is determined that a revision to the Project Schedule is required, it shall be provided to the Project Manager for review within 15 Calendar Days of Contractor receiving written notification of the requirement from the Project

Manager. The Project Manager's review of the revised schedule will not exceed 5 working days. Revisions required as a result of the Project Manager's review shall be submitted within 5 working days. When accepted by the Project Manager in writing, the revised schedule shall become the Project Schedule.

The Contractor shall participate in the Project Manager's review and evaluation of the submittals. Meetings will be held to review progress and planning when requested by the Project Manager or Contractor. The Project Manager may request additional project scheduling information and documentation as deemed necessary, including reports and other information that may be reasonably generated using CPM software if required by the Contract.

The Contractor shall prosecute the work according to the Project Schedule. The Contractor shall be responsible for assuring that its subcontractors, suppliers, and engineers/surveyors, at any tier, also prosecute the work according to the Project Schedule. The City shall be entitled to rely on the Project Schedule for planning and coordination.

Acceptance of the Contractor's Project Schedule by the Project Manager is not to be construed as relieving the Contractor of obligation to complete the Contract work within the Contract time allowed for the portion of the work or the entire Contract, or granting, rejecting or in any other way acting on the Contractor's request for extension of Contract time, or claims for additional compensation.

All costs relating to preparation, submittal, and acceptance of the Project Schedule, reports and revisions, and all requirements of this subsection will not be paid for separately, but shall be included in the work.

Failure of the Contractor to comply with the requirements of this subsection may be grounds for a determination by the Project Manager that no further progress payments are to be made until the Contractor is in full compliance.

## **104.02 SCHEDULE OF VALUES**

Promptly following the execution of the Contract Documents for all Firm Fixed Price, lump sum Contracts, the Contractor shall prepare and transmit to the Project Manager two copies of an itemized Project cost breakdown showing the unit quantities of each major construction item and the corresponding unit prices. Such unit prices shall contain all costs including profit and overhead of each item complete in place. The total cost of all the items shall equal the Contract price for the Project. This breakdown, once approved by the Project Manager, will be used primarily in determining payment due the Contractor as provided herein. If, in the opinion of the Project Manager, any unit price submitted by the Contractor is unbalanced, a detailed breakdown of the items contained in the unit will be required.

For Contracts executed on a fixed unit price basis, payment shall be made based on the actual number of units installed or performed that are complete, however, payment shall not exceed the total Contract amount unless previously approved by Change Order.

#### **104.03        SURVEYS**

Unless otherwise specified in the Contract Documents, the City will furnish all site surveys, easements, pipeline licenses, etc., necessary to authorize construction of any permanent works required in the Contract, where such work is to be done on property other than the City's.

The Project limits of construction shall be within the public right-of-way and/or City easements. The Contractor shall not trespass on premises outside of the limits of construction for this Project, unless permission to do so is granted by the property owner in writing. Copies of any such grant shall be furnished to the City prior to the performance of any work outside the limits of construction.

#### **104.04        SUBCONTRACTS**

The Contractor will be permitted to subcontract a portion of the Contract; however, the Contractor shall perform work amounting to 30 percent or more of the original total cost of proposal items. Any items designated in the Contract as "specialty items" may be performed by subcontractor. The cost of "specialty items" so performed by subcontractor may be deducted from the original total cost of proposal items before computing the amount of work required to be performed by the Contractor.

The calculation of the percentage of subcontracted work shall be based on the Contract unit prices rather than subcontract unit prices. Proportional value for a subcontracted partial Contract item will be verified by the Project Manager. For the purpose of calculating the value of subcontracted work, the cost of procuring materials and manufactured products can be included in either the Contract or subcontract. However, when a firm both sells material to a Contractor and performs the work of incorporating the materials into the Project, these two phases shall be considered in combination and as constituting a single subcontract.

The Contractor shall as soon as practical after signing the Contract notify the Project Manager in writing, giving the names and qualifications, of all subcontractors proposed to do work on the Project within fifteen (15) business days of notice of award. The City shall have the right to reject subcontractors who are debarred or suspended from doing business with the federal government, State government, or the City of Colorado Springs. The Contractor shall notify the Project Manager of each subcontract he awards, giving:

- (a) Name, address, and telephone number of the subcontractor
- (b) Branch of work covered
- (c) Total price of subcontract
- (d) Date of subcontract

It shall be the responsibility of the Contractor to file with the Project Manager copies of applicable permits and licenses required to do the subcontracted work. Subcontracts or transfer of Contract obligations shall not release the Contractor of liability under the Contract and bonds.

#### **104.05        OTHER CONTRACTS**

The City may undertake or award other Contracts for additional work at or near the site of the work under this Contract. The Contractor shall fully cooperate with the other Contractors and with City employees and shall carefully adapt their scheduling and performance of the work to accommodate the additional work, heeding any direction that may be directed by the Project Manager. The Contractor shall not commit or permit any act, which will interfere with the performance of work by any other contractor.

### **SECTION 105        CONSTRUCTION SITE**

#### **105.00        LANDS TO BE USED FOR WORK**

The Contractor shall confine the work activities to the area shown in the construction drawings. The Project Manager will furnish the Contractor with copies of all executed right of way (ROW) and easement documents for the Project. The established work zone shall be marked and secured with orange safety fence. Any additional work area required within adjoining private properties must be acquired by the Contractor by written permission from the property owner. The Contractor shall restore any damage or disruption to other properties utilized in the performance of this Project to an equal or better than pre-construction condition at no cost to the City. The Contractor shall indemnify and hold the City harmless from any claims or losses from damage or disruption of private property.

Contractor shall provide, at its expense and without liability to the City, any additional land and access thereto that may be required for temporary construction facilities or for storage of materials. All such costs will be considered incidental to the work and will not result in additional cost to the City. Contractor personnel shall not unnecessarily enter upon private property without the express written consent of the landowner. The Contractor shall provide the Project Manager with a copy of the written permission. The Contractor shall

indemnify and hold the City harmless from any claims or losses related to Contractor trespassing.

#### **105.01 STORAGE OF MATERIALS**

The Contractor shall confine its equipment, apparatus, the storage of materials and operations of Contractor's workmen to limits indicated by law, ordinances, permits, or directions of the City and shall not encumber the Project site with materials or equipment not necessary for the Project.

#### **105.02 LOADING OF STRUCTURES**

The Contractor shall not load or permit any part of a structure to be loaded with a weight that will endanger the structure's safety. The Contractor shall enforce the Project Manager's instructions regarding signs, advertisements, fires, and smoke.

#### **105.03 SANITARY PROVISIONS**

The Contractor shall provide and maintain on the construction site at all times suitable sanitary facilities for use of those employed on this Contract without committing any public nuisance. All toilet facilities shall be subject to the approval of the El Paso County Public Health Department. All portable toilet facilities for this Project shall be kept on City or State right-of-way as directed by the Project Manager.

#### **105.04 ACCIDENT PREVENTION**

The Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The Contractor shall submit to the City an acceptable, comprehensive Safety Plan for review prior to commencement of the Work. The Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

- a.) All persons on or about the Site or who may be affected by the Work;
- b.) All Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
- c.) Other property at the site or adjacent thereto, including buildings, real property, trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and underground facilities not designated for removal, relocation, or replacement in the course of the Work.

Notwithstanding the foregoing, the City reserves the right to direct the Contractor to stop work and correct an unsafe condition at any time that any person present

at the job site identifies any unsafe condition or action. For this purpose only, any person at the job site is authorized to act on behalf of the City, but such intermittent delay shall not be grounds for an increase in the Contract price or schedule.

Precaution shall be exercised at all times for the protection of persons, including employees, and property. The safety provisions of all Federal, State and Municipal laws and any other codes relating to the public safety, shall be strictly observed, and the Contractor shall, at all times, whether or not so specifically directed by the Project Manager, take the necessary precautions to ensure the protection of the public.

Piling, sheeting and shoring shall be utilized where required to prevent any excessive widening or sloughing of a trench which may be detrimental to human safety, traffic flow, a pipe being placed, trees, or to any existing structure.

Excavated materials shall be placed a safe distance from the sides of the trench. Heavy equipment shall not be used or placed near the sides of a trench unless the trench is adequately braced.

The Contractor shall not load or permit any part of a structure to be loaded with a weight that will endanger the structure's safety.

The Contractor shall designate a qualified and experienced safety representative at the Work site(s) whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety plans and programs.

#### **105.05 PROTECTION OF THE PUBLIC WORKS AND PROPERTY**

The Contractor shall provide and maintain all necessary watchmen, barricades, lights, and warning signs and take all necessary precautions for the protection of the public. The Contractor shall continuously maintain adequate protection of all work from damage, and shall take all reasonable precautions to protect the City's property from injury or loss arising in connection with the Contract. The Contractor shall make good any damage, injury, or loss to their work and to the property of the City resulting from lack of reasonable protective precautions except such as may be due to errors in the Contract Documents, or caused by agents or employees of the City. The Contractor shall check all cautionary signs at least once a day during this Contract.

The Contractor shall continuously maintain adequate protection of all their work from damage and shall protect the City's and adjacent property from injury arising in connection with this Contract.

The Contractor will be responsible for any and all damage to property, public or private, that may be caused by its operations in the performance of this Contract,



and the Contractor shall defend any suit that may be brought against itself or the City on account of damage inflicted by its operations, and shall pay any judgments awarded to cover such damage and shall indemnify the City for any losses arising out of such damage or related claims.

The Contractor shall be responsible for the restoration of all existing surface or subsurface improvements damaged as a result of construction at no additional cost to the City.

## **105.06 PUBLIC ROADS**

The Contractor in executing the work on this Project shall not unnecessarily impede or interfere with traffic on public highways or streets. Detours, including surfacing, guard rails, temporary bridges and culverts, as may be shown on the drawings, or ordered by the Project Manager to accommodate the general public, residents adjacent to the improvements, and the United States mail shall be provided and maintained by the Contractor in a good workmanlike manner. Any call out of City Barricade Crews shall be charged to and paid for by the Contractor.

All work done within the public right-of-way and/or easements requires a Traffic Control Plan approved by the City Traffic Engineering Division.

The Contractor shall provide and maintain in place all barricades, warning signs, lights and other safety devices required to protect the work, divert traffic, and warn pedestrians of open excavation, unfilled trenches, and other areas or conditions which might be hazardous or dangerous. Detour routings must first be submitted to the City Traffic Engineer for review and approval and shall be signed for the entire route of the detour as required to return the traffic to their street or origination. Detours shall be maintained throughout the period of construction in such a manner as to provide the least amount of disruption to normal traffic flow.

All signing and barricading shall conform to the latest editions of the following:

- (a) Manual of Uniform Traffic Control Devices for Street and Highways (MUTCD)
- (b) City of Colorado Springs Traffic Signage and Markings Manual
- (c) City of Colorado Springs Construction Traffic Control Manual

The City Traffic Engineer may require flag persons or off-duty police officers for traffic direction.

#### **105.07 PROTECTION OF EXISTING CURBS, GUTTERS AND DRIVEWAYS**

The Contractor shall exercise care in protecting existing curbs, gutters and driveways. Curbs, gutters and driveways damaged by the Contractor's operations shall be removed and replaced by the Contractor at Contractor's expense.

#### **105.08 PROTECTING AND REMOVING PLANTINGS**

The Contractor shall protect all existing trees, shrubs and other plantings from above ground and root structure damage during the construction activities. Plantings which are considered to be slightly damaged shall be properly pruned and sealed according to accepted nursery practices. Contractor shall be liable for the costs of any unnecessary damage to plants or trees as determined by the Project Manager. Where plantings are in conflict with new work, as determined by the City Forester (plantings in the public right-of-way) or by the inspector or owner (plantings on private property), the Contractor shall at his expense remove the planting. The Contractor shall coordinate with the City Forester prior to working in the vicinity of plantings in the public right of way.

In all cases, the proper planting season shall be observed to assure proper establishment and growth of the plantings.

Tree branches shall be trimmed back to the trunk, all around, to a minimum height of 8' above the adjacent walkway. Work shall be done only by a licensed Tree Service as provided in City Code Chapter 2, Article 3, Part 3.

#### **105.09 PUBLIC CONVENIENCE AND SAFETY**

The Contractor shall make every effort to minimize the inconvenience to property owners and to the traveling and pedestrian public, and shall conduct the Work to minimize obstruction to traffic and inconvenience to property owners affected by the Work.

The Contractor shall notify and coordinate the closing and construction of the driveways, curb, gutter and sidewalks with the Project Manager and the adjoining property owners in advance of Work in writing. The Contractor shall provide 72 hours written notice in advance of any construction that may affect access, parking and/or existing structures, including fences adjacent to that property.

Suitable access and parking will be maintained at all times. Access may be limited to half the existing driveway width for limited periods during concrete driveway and street construction. An additional verbal notice shall be provided to each business or property owner 30 minutes prior to the actual access drive closure.

Relocating of fences and structures shall be coordinated with property owners and shall include miscellaneous items including, but not limited to, utility services, street signs and mailboxes, sod replacement, sprinkler system modifications, control boxes, railroad tie walls, etc. If no such items are specifically included in the Contract, these items will be considered incidental to the work and are to be included in the unit prices. The Contractor shall coordinate the salvaging of any materials suitable for re-use with the City Inspector and, if on private property, with the respective property owners.

Any restrictions on street parking or traffic movement shall be coordinated with the City Traffic Engineer.

#### **105.10 FAILURE TO MAINTAIN SAFE SITE**

If the City becomes aware of failure to comply with applicable safety regulations, the Project Manager may inform the Contractor who shall take immediate steps to remedy the noncompliance. The Project Manager shall give written notification to the Contractor directing it to correct the unsafe acts or conditions. If the Contractor fails to comply with such a notification, the Project Manager may issue a Stop Work order in accordance with this Contract, and work shall only be resumed after adequate corrective actions have been taken to correct the safety deficiencies the Contractor has been notified of. Stoppage of work because of noncompliance with prescribed accident precaution measures shall not be considered a changed condition or changes in work, nor reason for extension of completion time.

In case of injury to persons or property by reason of failure to erect and to maintain necessary barricades, safeguards, and signals, or by reason of any act or omission of the Contractor, or Contractor's subcontractors, agents, or employees, during the performance of this Contract, the City may withhold payments due the Contractor so long as shall be reasonably necessary to indemnify the City on account of any such injuries, but the City's payment or failure to pay any sum shall not be considered a waiver of its right to indemnity under the this Contract.

#### **105.11 EROSION AND DRAINAGE CONTROL**

Contractor shall provide for the drainage of stormwater and such water as may be applied or discharged on the site in performance of the work per the latest revision of the City of Colorado Springs Drainage Criteria Manual, Volume II. Drainage facilities shall be adequate to prevent damage to the work, the site, and adjacent property.

The Contractor shall prevent the pollution of drains and watercourses by sanitary waste, sediment, debris or other substances resulting from this work. Contractor shall be required to clean up and isolate such materials on a continuing basis to prevent risk of washing into such drainage ways.

Should the affected areas of the Project exceed one acre, a Stormwater Discharge Permit shall be required. Affected area includes excavations, material stockpiles and areas where equipment and vehicles disturb the ground. An exact definition of the affected area should be obtained from the Colorado Department of Public Health and Environment (CDPHE).

#### **105.12 POLLUTION**

The Contractor shall at all times ensure compliance with applicable Federal, State, and Municipal air, water, and noise pollution laws and ordinances. The Contractor shall at all times have the proper sprinkling equipment available and shall apply water in the amount determined by each site condition or as directed by the Project Manager. The Contractor shall obtain all necessary permits at Contractor's expense, which may include, but not be limited to, El Paso County or a State Air Emission permit, State of Colorado Construction Activity permit, State of Colorado Dewatering permit and Section 404 Corp of Engineers permit, unless otherwise specified in the RFP.

#### **105.13 TEMPORARY CONSTRUCTION**

All temporary facilities, including the Contractor's field office which it may maintain at the site, and additional offices erected by subcontractors, shall be neatly constructed and arranged on the site in an orderly manner. The Contractor shall prepare and submit to the Project Manager, for approval prior to starting work, a construction plan layout, showing arrangement of storage areas, temporary buildings, equipment, and work areas. The Contractor shall provide suitable weather-tight storage sheds of capacity required to contain all materials which might be damaged by storage in the open. The Contractor shall at all times keep copies of all Contract Documents readily accessible at its office at the site.

#### **105.14 TEMPORARY WATER SUPPLY**

The Contractor shall provide, at Contractor's own expense, temporary water connections and water supply necessary for the prosecution of the work and permit all contractors on the work to use this supply at a reasonable prorated charge, or by sub-metering. The Contractor shall pay for all water consumed in the work, and shall arrange with Colorado Springs Utilities for temporary connections and payment of service charges. Upon completion of the Contract work, all temporary waterlines shall be removed. The City will devise a method and plan to monitor and enforce the proper use of temporary water. The City will inspect for compliance.

#### **105.15 TEMPORARY ELECTRICITY**

The Contractor shall arrange with the Colorado Springs Utilities for temporary electricity necessary for the prosecution of the work. The Contractor shall pay for

all electric current consumed, and shall permit all contractors on the work to use this supply at a reasonable prorated charge, or by sub-metering.

#### **105.16      TEMPORARY HEAT**

The Contractor shall provide adequate, temporary heat required during construction. Until the building or work area is enclosed, heavy tarpaulin shall be used to enclose any space requiring heating or protection from weather during construction operations. After the heating plant is in operating condition and the building is enclosed, heat may be provided from the permanent heating plant if such is approved by the Project Manager. In such case, the Contractor shall arrange to operate the plant, connect permanent or temporary radiation or unit heaters, and so maintain the plant during operation that it will be turned over to the City undamaged at the completion of the work. The Contractor shall provide all fuel required. In no case shall salamander heating be used in finished or plastered surfaces; instead, gas-steam radiators, unit heaters, or other suitable and approved means shall be used if the permanent heating plant is not available. This applies only to structures. It does not apply to road improvements or other outdoor improvements.

#### **105.17      TEMPORARY ENCLOSURES**

The Contractor shall provide and maintain temporary enclosures for the work as may be required to permit continuation of interior work during inclement weather, if wall and roof construction has progressed sufficiently to make interior work possible. This applies only to structures. It does not apply to road improvements or other outdoor improvements.

#### **105.18      CLEAN-UP**

The Contractor shall at all times keep the work area including storage and staging areas, free from accumulations of waste materials. The Contractor is also responsible for any costs associated with cleanup of debris from the work site or storage areas that may inadvertently be scattered outside the area by weather or vandalism. Upon completion of the work, the Contractor shall leave the work area in a clean neat and orderly condition satisfactory to the Project Manager.

### **SECTION 106      ROYALTIES, PATENT INFRINGEMENTS, SPECIAL LICENSES AND PERMITS**

#### **106.00      ROYALTIES AND PATENTS**

The Contractor shall pay all applicable royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent rights and save the City harmless from loss on account thereof except that the City may be responsible for any such loss when a particular process, design, or the product of

a particular manufacturer or manufacturers is specified, unless the City has notified the Contractor prior to the signing of the Contract that the particular process, design, or product is patented or is believed to be patented.

## **SECTION 107      WORK PROVISIONS AND RULES**

### **107.00      COMMENCEMENT AND COMPLETION OF WORK**

- (a) Preconstruction Conference. After issuance of Notice to Proceed, or as otherwise established by the City, a preconstruction conference ("Preconstruction Conference") shall be held for review of the construction schedule, Contractor's written list of subcontractors and suppliers, written list of all required permits, project contracts, utility support plan, water control plan, Traffic Control Supervisor name and telephone number, gradations, test results, certifications, review procedures for handling shop drawings and other submittals, processing applications for payment, and other pertinent items.
- (b) At the Preconstruction Conference, the Contractor shall furnish the Project Manager a written list of all permits required for the proper completion of the Contract. The list shall clearly identify the type of permit or permits that must be obtained before work on any particular phase or phases of work can be started.
- (c) The Contractor shall commence work within ten (10) Calendar Days of the date specified on the Notice to Proceed and complete the Contract within the number of Calendar Days or by the date specified in the proposal form. Unless otherwise noted in the Contract, the number of days are Calendar Days.
- (d) The dates fixed for commencement and completion of the work may be extended by the Project Manager. All requests for extension of time by the Contractor shall be made in writing to the Project Manager and shall set forth the reasons for such requests. The Project Manager may fix the period of extension, if any. In addition, the Project Manager may grant a period of extension upon an execution of a Change Order. Any Project Manager's decision on extensions of time shall be binding upon the parties hereto. Requests for extension of time received twenty (20) or more days after the occurrence of the delay will not be honored. No requests for extension of time shall be honored if submitted after the completion date.
- (e) If satisfactory execution and completion of the Contract shall require work or materials in greater amounts or quantities other than those set forth in the Contract, then the Contract time may be adjusted at the time of the execution of the Change Order. No allowance will be made for delays or

suspension of the prosecution of the work due to the fault of the Contractor.

#### **107.01      FAILURE TO COMPLETE WORK ON TIME, LIQUIDATED DAMAGES**

If the Contractor fails to fully perform and complete the work in conformity to the provisions and conditions of the Contract within the specified time limit set forth in the Contract, including any extensions granted hereto, the Contractor may be subject to a stop work order, as provided in this Contract. In addition, the Contractor shall pay to the City for each Calendar Day of delay until such time the Contract is complete, liquidated damages at the applicable daily rate below. The amounts shown are considered to be liquidated damages to reimburse the City for the additional cost of construction engineering and Contract administration services and in no case are considered a penalty.

Original Contract Amount	Amount of Liquidated Damages Per Day
Less than \$50,000	\$300.00
\$50,000 to \$100,000	\$500.00
\$100,000 to \$500,000	\$700.00
\$500,000 to \$1,000,000	\$900.00
Over \$1,000,000	\$1500.00

#### **107.02      WORK IN BAD WEATHER**

No construction work shall be done during stormy, freezing, or inclement weather, except such as can be done satisfactorily, and in a manner to secure first class construction throughout, and then only subject to permission of the Project Manager.

The granting of a time extension for inclement weather does not imply or guarantee that additional compensation for incidental and appurtenant work caused by such weather will be approved or authorized by the Project Manager. Weather delays that can be reasonably anticipated shall not result in increased cost to the City. The Project Manager will be the sole judge as to the reasonableness of delays for inclement weather.

#### **107.03      EXCUSABLE DELAYS**

The Contractor's right to proceed will not be terminated, and the Contractor will not be charged with damages, for delays in completing the work that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include:

- (a) Acts of God or of the public enemy,

- (b) Acts of the government in either its sovereign or Contractual capacity,
- (c) Acts of another contractor in the performance of a contract with the government,
- (d) Fires,
- (e) Floods,
- (f) Epidemics,
- (g) Quarantine restrictions,
- (h) Strikes of employees other than Contractor's employees,
- (i) Freight Embargos,
- (j) Unusually severe weather, or
- (k) Delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers.

#### **107.04      COMPENSATION FOR COMPENSABLE DELAYS**

If the Project Manager determines that a delay is compensable in accordance with the Contract, monetary compensation will be determined in accordance with this subsection.

- (a) These categories represent the only costs that are recoverable by the Contractor. All other costs or categories of costs are not recoverable:
  - 1. Actual, reasonable wages and benefits, including FICA, paid for additional non-salaried labor;
  - 2. Reasonable and actual costs for additional bond, insurance and tax;
  - 3. Increased, reasonable, and actual costs for materials;
  - 4. Reasonable equipment costs calculated in accordance with the current edition of the Rental Rate Blue Book of Rental Rates for Construction Equipment for Contractor-owned equipment and based on invoice costs for rented equipment;
  - 5. Reasonable and actual costs of extended job site overhead;



6. Reasonable subcontractor's claims (the same level of detail as specified herein is required for all subcontractors' claims)
  7. An additional 10 percent will be added to the total of items (1), (2), (3), (4), (5), and (6) as compensation for items for which no specific allowance is provided, including profit, overhead, and general and administrative expenses.
- (b) In adjustment for costs as allowed above, the City will have no liability for the following items of damages or expense:
1. Profit in excess of that provided in (a) above;
  2. Loss of profit;
  3. Additional cost of labor inefficiencies in excess of that provided in (a) above;
  4. Home office or other overhead or general and administrative expenses in excess of that provided in (a) above;
  5. Consequential damages, including but not limited to loss of bonding capacity, loss of bidding opportunities, and insolvency;
  6. Indirect costs or expenses of any nature in excess of that provided in (a) above;
  7. Attorney's fees, claim preparation fees, and expert fees.

All costs claimed must be documented and accompanied by a written certification from the Contractor.

#### **107.05        EMERGENCY WORK**

In an emergency affecting the safety of life or of the work or of adjoining property, the Contractor is, without special instructions or authorization from the Project Manager, hereby permitted to act at Contractor's discretion to prevent such threatening loss or injury. Contractor shall also act, without appeal, if so authorized or instructed by the Project Manager. Any reasonable compensation claimed by the Contractor on account of emergency work shall be determined by mutual agreement or in accordance with the Changes provision of this Contract.

#### **107.06        VALUE    ENGINEERING    CHANGE    PROPOSALS    BY    THE CONTRACTOR**

The Contractor is encouraged to develop and offer proposals for improved construction techniques, alternative materials and other innovations. Proposals must provide a project comparable to the City's original design either at lower cost, with improved quality, or both. If a Value Engineering Change Proposal (VECP) Proposals shall be submitted only after contract award. If a VECP is rejected, the work shall be completed in accordance with the Contract at the Contract price. The Contractor shall have no claim against the City for compensable or noncompensable delay to the Contract based on the failure to respond to a VECP.

The Contractor may submit either a full VECP or a preliminary Conceptual VECP, followed by a full proposal. The City Engineer will provide timely review of all VECPs and advise the Contractor whether the VECP is complete or incomplete. When the VECP is complete, the Project Manager will advise the Contractor of either the approval of the VECP or the reasons for rejection of the VECP.

Cost savings generated to the Contract as a result of VECPs offered by the Contractor and accepted by the Project Manager shall be shared equally between the Contractor and the City.

If the Project Manager determines that the time for response indicated in the submittal under item (c)5 below is insufficient for review, the Contractor will be promptly notified. Based on the additional time needed by the Project Manager for review and the effect on the Contractor's schedule caused by the added time, the Project Manager will evaluate the need for a non-compensable time adjustment to the Contract.

- (a) VECPs that will be considered are those that would produce savings to the City or provide improved Project quality without impairing essential functions and characteristics of the Project. Essential functions include but are not limited to: service life, economy of operation, ease of maintenance, desired appearance, safety, and impacts to the traveling public or to the environment during and after construction.
- (b) *Submittal of Conceptual Proposal.* For VECPs that require a significant amount of design or other development resources, the Contractor may submit an abbreviated conceptual proposal for preliminary evaluation. The Project Manager will evaluate the information provided and advise the Contractor if any conditions or parameters of the conceptual proposal are found to be grounds for rejection. Preliminary review of a conceptual proposal reduces the Contractor's risk of subsequent rejection but does not commit the City to approval of the full VECP. The following information shall be submitted for each conceptual proposal.

1. A statement that the proposal is submitted as a conceptual VECP.

2. A general description of the difference between the existing Contract and the proposed change, and the advantages and disadvantages of each, including effects on cost, service life, economy of operation, ease of maintenance, desired appearance, safety, and impacts to the traveling public or to the environment during and after construction.
  3. A set of conceptual plans and a description of proposed changes to the Contract specifications.
  4. An estimate of the anticipated cost savings or increase.
  5. A statement specifying:
    - a. when a response to the conceptual proposal from the City is required to avoid delays to the existing contract prosecution,
    - b. the amount of time necessary to develop the full Proposal,
    - c. the date by which a Change Order must be executed  
to obtain maximum benefit from the VECP, and
    - d. the VECP's impact on time for completing the Contract.
- (c) *Submittal of Full Value Engineering Change Proposal.* The following materials and information shall be submitted with each VECP.
1. A statement that the proposal is submitted as a VECP.
  2. A description of the difference between the existing Contract and the proposed change, and the advantages and disadvantages of each, including effects on service life, economy of operation, ease of maintenance, desired appearance, safety, and impacts to the traveling public or to the environment during and after construction.
  3. A complete set of plans and specifications showing the proposed revisions relative to the original Contract. This portion of the submittal shall include design notes and construction details. The proposed plans and specifications shall be signed and sealed by the Contractor's engineer.
  4. A complete analysis indicating the final estimated costs and quantities to be replaced by the VECP compared to the new costs and quantities generated by the VECP. All costs and proposed unit prices shall be documented by the Contractor.

5. A statement specifying the date by which a Change Order must be executed to obtain the maximum cost reduction during the remainder of the Contract.
6. A statement detailing the effect the VECP will have on the time for completing the Contract.
7. A description of any previous use or testing of the proposed changes and the conditions and results. If the VECP was previously submitted on another City project, the VECP shall indicate the date, Contract number, and the action taken by the City.
8. An estimate of any effects the VECP will have on other costs to the City.
9. A statement of life cycle costs, when appropriate. Life cycle costs will not be considered as part of cost savings but shall be calculated for additional support of the VECP. A discount rate of four percent shall be used for life cycle calculations.
10. A statement specifying when a response from the City is required to avoid delays to the prosecution of the Contract.

(d) *Evaluation.* VECPs will be evaluated in accordance with the following:

1. The Project Manager will determine if a VECP qualifies for consideration and evaluation. The Project Manager may reject any VECP that requires excessive time or costs for review, evaluation, or investigations. The Project Manager may reject proposals that are not consistent with the City's design policies and criteria for the Project.
2. VECPs, whether or not approved by the City, apply only to this Contract and become the property of the City. VECPs shall contain no restrictions imposed by the Contractor on their use or disclosure. The City has the right to use, duplicate and disclose in whole or in part any data necessary for the utilization of the Proposal. The City retains the right to utilize any accepted VECP or part thereof on other projects without obligation to the Contractor. This provision is subject to rights provided by law with respect to patented materials or processes.
3. If the City is able to demonstrate that it is already considering certain revisions to the Contract, prior to receipt of the VECP, or has approved certain changes in the Contract for general use that are subsequently proposed in a VECP, the Project Manager will reject the VECP and may proceed to implement these changes without obligation to the Contractor.

4. The Contractor shall have no claim against the City for additional costs or delays resulting from the rejection or untimely acceptance of a VECP. These costs include but are not limited to: development costs, loss of anticipated profits, increased material or labor costs, or untimely response.
  5. VECP will be rejected if equivalent options are already provided in the Contract.
  6. VECP that only reduce or eliminate Contract pay items will be rejected.
  7. The savings generated by the VECP must be sufficient to warrant a review and processing, as determined by the Project Manager.
  8. A VECP changing the type or thickness of the pavement structure or changing the design of a bridge will be rejected.
  9. Additional information needed to evaluate VECPs shall be provided in a timely manner. Untimely submittal of additional information will result in rejection of the VECP. Where design changes are proposed, the additional information shall include results of field investigations and surveys, design and computations, and changed plan sheets required to develop the design changes.
- (e) *Payment.* If the VECP is accepted, the changes and payment will be authorized by a Change Order. Reimbursement will be made as follows:
1. The changes will be incorporated into the Contract by changes in quantities of unit items, new agreed unit price items, or both, as appropriate, under the Contract.
  2. The Price of the contract will be revised to reflect the changes in the VECP. The City will pay the Contractor 50 percent of the savings to the City upon completion of the Project. The savings to the City shall be the difference between the cost of the revised work and the cost of the related construction required by the original Contract computed at Contract prices.
  3. Costs incurred by the Contractor for development, design, and implementation of the VECPs will not be reimbursed.
  4. When work performed under an approved VECP is modified to fit field or other conditions, the maximum amount paid for the work will be limited to that which would have been paid if the work had been performed under the original Contract provisions. The rejection or limitation of reimbursement shall not constitute the basis of any claim against the City for delay or for other costs except as allowed under the original Contract.

#### **107.07      AUTHORITY OF THE PROJECT MANAGER**

The Project Manager will decide all questions regarding the quality and acceptability of materials furnished, work performed, and the rate of progress of the work, all interpretation of the plans and specifications, and the acceptable fulfillment of the Contract. The Project Manager will perform technical inspection of the work and shall have authority to reject all work and materials which do not conform to the Contract.

The Project Manager has authority to stop the work whenever such stoppage may be necessary to insure the proper execution of the Contract or for the convenience of the City. The Project Manager may order the Contractor, by giving ten (10) days written notice, to suspend, delay, or interrupt all or any portion of the work required by the Contract for a period of up to (10) ten Calendar Days at no additional cost to the City. The Project Manager may immediately stop the work when it is determined that the public's safety and welfare is in jeopardy.

The Project Manager will, within a reasonable time after their presentation to the Project Manager, make decisions in writing on all claims submitted to the City by the Contractor and on all other matters relating to the execution and progress of the work or the interpretation of the Contract Documents. The Project Manager's decisions shall be final.

#### **107.08      DUTIES OF THE INSPECTOR**

Inspectors employed by the City are authorized to inspect all work done and materials furnished. Any such inspection may extend to all or any part of the work and to the preparation, fabrication or manufacture of the materials to be used. An inspector is not authorized to alter or waive the provisions of the Contract. An inspector is not authorized to issue instructions contrary to the provisions of the Contract or to act as foreman for the Contractor.

#### **107.09      CONSTRUCTION OBSERVATION AND INSPECTION**

The Project Manager shall at all times have access to the work, and the Contractor shall provide proper equipment, materials and labor as required for such access and inspection.

All equipment, material, and articles incorporated into the work covered by this Contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this Contract. The Project Manager shall have the right to reject materials and workmanship, which are defective, or require their correction. Rejected workmanship shall be satisfactorily corrected and rejected materials shall be removed from the premises and replaced without charge to the City. If the Contractor does not correct such rejected work and

remove rejected materials within a reasonable time fixed by written notice, the City may remove them and charge the expense to the Contractor.

Should it be considered necessary or advisable by the Project Manager at any time before final acceptance of the entire work to make an examination of work already completed, by removing or tearing out same, the Contractor shall on request promptly furnish necessary facilities, labor and materials. If such work is found to be defective in any material respect due to fault of the Contractor or his subcontractors, he shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the Contract, the actual, reasonable cost of labor and material necessarily involved in the examination and replacement, plus ten (10) percent, will be allowed the Contractor.

All materials to be incorporated in the work, all labor performed, all tools, appliances, and methods used shall be subject to the inspection and approval or rejection of the Project Manager.

If the Project Manager points out to the Contractor, Contractor's foreman, or agent any neglect or disregard of the Contract provisions, such neglect or disregard shall be remedied and further defective work be discontinued immediately.

The Contractor shall execute the work only in the presence of the Project Manager or authorized representative, unless provision has been made for the work to proceed without complete engineering supervision or inspection. The presence of the Project Manager or authorized representative shall in no way relieve the Contractor of any responsibility under this Contract.

The observation of the work by the Project Manager is intended to aid the Contractor in applying labor, materials, and workmanship in compliance with the Contract provisions. Such observation, however, shall not relieve the Contractor from any of Contractor's Contract obligations.

#### **107.10 CONTRACTOR COOPERATION**

All work under this Contract shall be performed in a skillful and professional manner. The Project Manager shall have the authority to order the Contractor to remove from the work site any employee the Project Manager deems incompetent, careless, or otherwise objectionable to the general public or the City by notify the Contractor of such order in writing.

- (a) Workmen, Methods and Equipment: Permission from the Project Manager to use any particular methods, equipment or appliances shall not be so construed as to relieve the Contractor from furnishing other equipment or appliances or adopting other methods when those in use prove

unsatisfactory to the Project Manager, or as to bind the Project Manager to accept work which does not comply with the Contract.

#### **107.11 CONTRACTOR'S RESPONSIBILITY FOR WORK**

Until the work is accepted by the Project Manager as evidenced by the issuance of the Certificate of Completion, the Contractor shall have the charge and care thereof and shall take every necessary precaution against injury or damage to any part thereof by action of the elements or from any other cause, whether arising from the execution or from the non-execution of the work. The Contractor shall rebuild, repair, restore, and make good all injuries or damages to any portion of the work occasioned by any of the above causes before its completion and acceptance and shall bear the expense thereof.

The Contractor shall be responsible for the preservation of all public and private property, trees, fences, monuments, and other property, along and adjacent to the improvements and shall use suitable precautions necessary to prevent damage to pipes, conduits, and other underground structures. When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect or misconduct in the execution of the work, or in consequence of the non-execution thereof on the part of the Contractor, such property will be restored by the Contractor and at Contractor's expense to a condition similar, or equal to that existing before such damage or injury to the satisfaction of the City's Project Manager.

It shall be the responsibility of the Contractor, when moving or operating equipment, to make all arrangements for temporary crossings of telephone, transmission, pipe lines, railroad tracks, and irrigation ditches. This work shall not be paid for as a separate item but shall be considered as incidental to the project.

#### **107.12 PROTECTION OF UTILITIES**

The Contractor's attention is directed to the fact that utilities may encroach on the construction of this Project, and also to the importance of protecting all public/private utilities encountered on this project. These may include telecommunications, cablevision, traffic signal lines, power lines, water lines, sewer lines, gas lines, railroad tracks, and other overhead and underground utilities.

The City does not warrant any survey work or location of utilities or other underground apparatuses whether performed by the City, its agent, or an independent contractor. Contractor understands and agrees any survey or location work performed by the City, its agent, or other independent contractor is provided for guidance purposes only, so as to show the approximate location of underground utilities or apparatuses. Contractor understands the existence or exact location of underground utilities or apparatuses may not be known to the



City or the design engineer of record. Contractor, therefore, agrees that it shall verify the existence and location of any underground utilities or apparatus along the route of work. Verification shall be done by potholing or using other methods which will detect the exact depth, dimensions, and location of any underground utilities or apparatus.

Contractor shall be liable for any damages, loss, or claims of whatsoever kind caused by its failure to pothole or use other methods of identifying the exact depth, dimensions, and location of any underground utilities or apparatus. Contractor agrees that any claim of any kind whatsoever, damages, loss, lawsuit, demand, or request for equitable adjustment ("Claims"), shall be waived and the City shall be forever released and discharged from such Claims if Contractor fails to comply with its obligations under this section. Contractor agrees that if it fails to maintain all records or other evidence establishing that it potholed or otherwise determined the exact location, depth, and dimensions of all underground utilities and apparatuses, then it shall not be permitted to make any Claim arising from or related to the location of underground utilities or apparatus.

The size and location of all existing utilities as known to the Project Manager have been noted on the plans for the information and guidance of the Contractor. The Contractor shall be responsible for the location and protection of all utilities located within his working area regardless of whether or not their existence or location is shown or noted on the drawings.

It is the Contractor's responsibility to complete required work and to schedule inspections during normal working hours. The Contractor is responsible for contacting each affected utility for their inspectors' working hours. The Contractor is responsible to request an inspection two (2) working days in advance of the inspection. In the case of an overtime inspection, the request must be in writing. All overtime costs for inspection by Colorado Springs Utilities, or other utilities personnel, shall be the Contractor's expense. The City will not entertain any requests for time extensions for delays caused by the Contractor's failure to properly notify the affected utility of a required inspection or the Contractor's failure to complete the required work by the time of the scheduled inspection.

Any information concerning underground utilities shown on the drawings is intended to be merely an aid to the Contractor. The accuracy of information with respect to underground utilities is not guaranteed. The Contractor shall make their own investigation, including exploratory excavations, to determine the locations and type of existing mains or service laterals or appurtenances when their presence can be inferred from the presence of other visible facilities, such as building, manholes, inlets, meters and junction boxes, on or adjacent to the site of the work. If the Contractor discovers utility facilities not identified in the plans or specifications or in a position different from that shown in the plans and

specifications, the Contractor shall immediately notify, verbally and in writing, the Project Manager and Owner of the utility facility.

Before any excavation is begun in the vicinity of water lines, railroad tracks, or structures, sewer lines, telecommunication conduits or cablevision line, each utility company, including Colorado Springs Utilities (if applicable), department, or company concerned must be notified in advance of such excavation, and such excavation shall not be made until an authorized representative of the utility concerned is at the site.

All utilities encountered must be kept in operation by the Contractor and must be protected and/or repaired at the Contractor's own expense, unless otherwise specified in the Contract documents. The Contractor shall be held liable for all damages to any and all public utilities encountered on the project, which damages are due to the Contractor's operations. Such damages shall include all physical damages to utilities and also all damages due to interruption of service of such utilities, when such damages and interruptions are caused by the Contractor's operations.

Where alterations or moving of utilities is not required to permit construction of the project, the Contractor shall take such measures as the Project Manager may direct to properly protect these utilities throughout his construction operations and shall cooperate at all times with the proper authorities and/or owners in maintaining service of railroads, conduits, pole lines, transmission lines, pipe lines, sewers, etc., affected by this project.

The costs of damages due to the Contractor's operation shall not be allowable under this Contract and shall result in no additional cost to the City. The cost of protecting utilities where alteration or relocation is not required to permit construction of the project shall be considered as included in the original Contract price for the project and shall result in no additional cost to the City.

Should any pipe line, water lines, or gas mains, electrical conduits, sewer pipes, overhead wiring, telecommunication lines, power lines, or any other such utilities, not specifically mentioned and provided for elsewhere as a part of this Contract, have to be moved, repaired, reconditioned, or revised due to the construction, or moved temporarily to permit construction of the project the party or parties owning and operating such utilities shall perform the actual work of moving, repairing, reconditioning, or revising such utilities. Any such work would be added via change order, and the cost of this work will be borne by Colorado Springs Utilities, the utility companies involved, or other means arranged by the City.

(a) Existing Utilities

1. Existing Gas Lines: As of April 1, 1983, Federal law requires anyone who uncovers a gas line to report it to the gas company and allow it to

be inspected by the gas company personnel before it is backfilled. Colorado Springs Utilities or other provider is to be notified prior to any excavation around gas lines. A Colorado Springs Utilities, or other applicable provider, inspector is to be notified and present on site prior to construction activities around gas lines.

2. Existing Sewer Mains and Services: All relocation, replacement protection shown on the plans or determined necessary by the inspector shall be performed according to the latest Colorado Springs Utilities Wastewater Standard Specifications. Minimum 48 hours' notice must be given to Colorado Springs Utilities prior to any related work.
3. The Contractor shall adjust sanitary sewer manhole rims to an elevation acceptable to Colorado Springs Utilities. The Contractor shall contact Colorado Springs Utilities twenty-four (24) hours prior to manhole rim adjustments.
4. Existing Water Mains and Services: All relocation, replacement or protection shown on the plans or determined necessary by the inspector shall be performed according to the latest Colorado Springs Utilities Water Standard Specifications and the Water Service Standard Specifications. Minimum 48-hour notice must be given to Colorado Springs Utilities prior to any related work. Colorado Springs Utilities reserves the right to schedule any operations at their discretion and to provide for any requirements determined necessary to perform the work. The Contractor shall coordinate with the Colorado Springs Utilities and receive their approval prior to performance of the work.

(b) Utility Support Systems:

1. If required by the Contract documents, or requested by the Project Manager, the Contractor shall submit shop drawings for the method of temporary support for all existing utilities during construction. The temporary support details for existing utilities shall be submitted for review and approval prior to performance of the work. Shop drawings must bear the seal of a Professional Project Manager registered in the State of Colorado, unless so waived by the City.
2. Regardless of City approved shop drawings, the Contractor shall be responsible for the satisfactory support of the utility system and any damages that may occur to the utility involved.

(c) Electric Utility Installation:

1. Any electric facilities unless otherwise noted are to be relocated or modified by Colorado Springs Utilities. The Contractor shall coordinate the work with Colorado Springs Utilities and Colorado Springs Utilities Contractor.
2. Light Pole Installation or Relocation:
  - a. The Contractor is responsible for coordinating with Colorado Springs Utilities, removing existing light pole foundations, constructing new light pole foundations, installing new conduits, and installing lighting junction boxes. The Contractor is responsible for coordinating with Colorado Springs Utilities for the de-energizing and removal of existing light poles.
  - b. Colorado Springs Utilities will remove the existing light standards, reset the light standards upon completion of the new foundations, conduit and junction boxes, pulling wire, and beginning operations of the lighting within the project limits. The Contractor is responsible for scheduling and coordination with Colorado Springs Utilities crews for reinstallation and re-energizing completed light poles.
- (d) Gas Utilities: The Contractor is responsible for coordinating with Colorado Springs Utilities for the relocation of existing Gas lines. Colorado Springs Utilities will relocate the existing gas lines as necessary to install project improvements within the project limits. The Contractor is responsible for scheduling and coordination with Colorado Springs Utilities crews.
- (e) Telecommunication Agencies: Any telephone facilities unless otherwise noted are to be relocated or modified by the respective private utility company. The Contractor shall coordinate the work with the respective private utility company.
- (f) Cablevision: The television utilities are to be relocated by the cable provider. The Contractor shall coordinate the work with any affected cable provider.

## **107.13 FEDERAL FUNDS**

If this Contract is a federally assisted construction contract all applicable federal requirements, terms and conditions, provisions and forms shall apply. Additionally, during the performance of this Contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation,

gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause

2. The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
4. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other Contract or understanding a notice advising the labor union or workers representative of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto,

and will permit access to his books, records, and accounts by the Secretary of Labor, State of Colorado Civil Rights Commission and any other governmental agency entity which may be assisting with the funding under this Contract for purposes of investigation to ascertain compliance with such rules, regulations and orders.

7. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any such rules, regulations, or orders, this Contract may be cancelled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further government Contracts or Federally assisted construction Contracts in accordance with the procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or otherwise provided by law.
8. The Contractor shall include the provisions of Paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the city, state, or any federal governmental entity may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the city, the state, or the United States to enter into such litigations to protect the interests of such governmental entity.

#### **107.14 SUPERINTENDENCE**

The Contractor shall give the work the constant attention necessary to facilitate the progress thereof and shall cooperate with the Project Manager and with other contractors or Colorado Springs Utilities employees in every way possible. The Contractor shall have at all times, on the work, as Contractor's agent, a competent superintendent capable of reading and thoroughly understanding the Plans and Specifications, and who shall have the necessary authority to receive and promptly execute the instructions and orders from the Project Manager or the Project Manager's authorized representative. Such superintendent shall be furnished irrespective of the amount of work sublet. The Contractor shall supply the Project Manager with a list of phone numbers at which the Contractor and its superintendent and foreman can be reached at any time. The assigned superintendent must adhere to the cooperation requirements specified in this

Contract and is subject to removal if so ordered in writing by the Project Manager.

#### **107.15 PREPARATION**

All vegetation, stumps, and debris and other objectionable objects shall be removed from the area staked out by the Project Manager, and where necessary from the area immediately adjacent thereto. Such debris shall be hauled from the site of the construction and wasted as directed by the Project Manager.

#### **107.16 STAKING WORK**

The Project Manager may provide reference points (horizontal and vertical control) only, unless otherwise noted in the proposal and project specifications. The Contractor shall engage the services of a licensed surveyor or surveying firm (hereinafter referred to as the Surveyor) to be approved by the Project Manager. The Surveyor shall perform all detailed construction layout and staking including the staking of all storm sewer, street improvements, and utility relocations in accordance with the plans and specifications. The Contractor shall be responsible for the correctness and accuracy of the detailed layout of finished structures.

Any instrument man or survey assistant employed on the work by the Contractor or his subcontractors, who are judged by the Project Manager to be incompetent, shall be removed from the work and replaced by a competent individual.

#### **107.17 DEVIATION ALLOWED**

Finished surfaces in all cases shall conform to lines, grades, cross sections and dimensions shown on the approved drawings or described in the Specifications. Deviations from the approved drawings and working drawings as may be required by the expediciencies of construction, in all cases, must be determined by the Project Manager and authorized in writing. If the Project Manager deems it inexpedient to correct work injured or done in an unauthorized manner, an equitable deduction from the Contract price of the work done shall be made by the Project Manager subject to approval of the City Procurement Services Manager.

#### **107.18 RIGHT-OF-WAY**

The City's right-of-way will in general be adequate for construction purposes. Nothing marked on the drawings shall be interpreted as giving the Contractor exclusive occupancy of the territory provided by the City. The City and its employees for any purpose, and other contractors of the City, for any purpose required by their respective contracts, may enter upon or occupy any portion of the land furnished by the City. When the territory of one contract is a necessary

or convenient means of access for the execution of another contract, such privileges of access or any other reasonable privilege shall be granted by the Contractor to the extent, amount, in the manner and at times necessary. No such joint occupancy or use of the territory shall be made as the basis of any claim for delay or damages.

#### **107.19 SHOP DRAWINGS AND SUBMITTALS**

The Contractor shall submit to the Project Manager all shop drawings and submittals required for the work, including those pertaining to structural and reinforcing steel within fifteen (15) Calendar Days from the date of the Notice of Award. The Contractor shall make any corrections in the drawings required by the Project Manager and resubmit the same without delay.

Three final copies of all shop drawings (if applicable), submittals (if applicable) and schedules shall be submitted to the Project Manager, who after checking will retain two copies and return one copy to the Contractor. The Project Manager's approval of shop drawings of equipment and material shall extend only to determining the conformity of such equipment and materials with the general features of the design drawings prepared by the Project Manager. It shall be the responsibility of the Contractor to determine the correctness of all dimensions and minor details of such equipment and materials so that when incorporated in the work, correct operations will result.

#### **107.20 RECORD DRAWINGS**

The Contractor shall maintain an up-to-date set of Contract drawings and Contract records, legibly marked; depicting all constructed improvements at the site or as otherwise specified and shall submit a complete set labeled "Project Record" to the Project Manager upon completion of the Project.

##### **(a) Drawings:**

1. Depths of various elements of foundation in relation to finish floor datum.
2. Horizontal and vertical locations of underground utilities and appurtenances, referenced to permanent surface improvements and Project survey control.
3. Location of internal utilities and appurtenances concealed in the construction, referenced to permanent surface improvements and project survey control.
4. Field changes of dimensions and detail.



5. Changes made by Change Order.
6. Details not on original Contract drawings.

(b) Specifications and Addenda:

1. Manufacturer, trade name, catalog number, and supplier of each product and item of equipment actually installed.
2. Changes made by Change Order.

## **107.21 MATERIALS**

Unless otherwise stipulated in the Specifications, all workmanship, equipment, materials, and articles incorporated in the work covered by this Contract are to be new and of the best grade of their respective kinds for the purpose. The Contractor shall furnish to the Project Manager for the Project Manager's approval, the name of the manufacturer of machinery, mechanical and other equipment, which he contemplates installing, together with their performance capacities and other pertinent information including but not limited to instruction manuals pertaining to the use and operation of such machinery, mechanical and other equipment.

When required by the Specifications, or when called for by the Project Manager, the Contractor shall furnish for approval full information concerning the materials or articles which he contemplates incorporating in the work. Samples of materials shall be submitted for approval when so directed. Machinery, equipment, materials, and articles installed or used without such approval shall be at the risk of subsequent rejection.

## **107.22 MATERIAL INSPECTION AT PLANT**

If the Project Manager inspects the materials at the source, the following conditions shall be met:

- (a) The Project Manager shall have the cooperation and assistance of the Contractor and the materials producer.
- (b) The Project Manager shall have full entry to all parts of the plant necessary for the manufacture or production of the materials being furnished.
- (c) Adequate safety measures shall be provided and maintained.

The City reserves the right to retest all materials which have been previously tested or inspected. The retesting may be prior to or after incorporation of the

materials into the work. Those materials inspected and tested after delivery on the Project or after incorporation into the work that do not meet the requirements of the Contract will be rejected and replaced at no additional cost to the City.

#### **107.23 HANDLING MATERIALS**

All materials shall be handled so their quality and fitness for the work is preserved. Aggregates shall be transported to the work in vehicles constructed to prevent loss or segregation of materials.

#### **107.24 CITY FURNISHED MATERIALS**

Material furnished by the City will be made available to the Contractor at the points specified in the Contract.

The cost of handling and placing materials after they are made available to the Contractor shall be considered as included in the Contract price for the item, and shall result in no additional cost to the City.

The Contractor will be held responsible for all material received until it is incorporated into the work and accepted.

Demurrage charges resulting from the Contractor's failure to accept the material at the designated time and point of delivery will be deducted from monies due the Contractor.

#### **107.25 BUY AMERICA REQUIREMENTS**

All manufacturing processes, including the application of a coating, for all steel and iron products permanently incorporated in the work shall have occurred in the United States of America. All manufacturing processes are defined as "processes required to change the raw ore or scrap metal into the finished, in-place steel or iron product". This requirement will not prevent a minimal use of foreign steel or iron provided the total project delivered cost of all such steel and iron which includes the cost of delivering the steel and iron to the Project, does not exceed one-tenth of one percent of the total Contract cost or \$2,500, whichever is greater.

With every steel or iron product that requires pre-inspection, pretesting, certified test results, or certificate of compliance, the Contractor shall provide a certification by each supplier, distributor, fabricator, and manufacturer that has handled the steel or iron product that every process, including the application of a coating, performed on the steel or iron product either has or has not been carried out in the United States of America. These certifications shall create a chain of custody trail that includes every supplier, distributor, fabricator, and manufacturer that handles the steel or iron product. The lack of these certifications will be

justification for rejection of the steel or iron product. Upon completion of the Project, the Contractor shall certify in writing of compliance with this requirement and provide evidence of the Project delivered cost of all foreign steel or iron permanently incorporated into the Project.

## **107.26 TESTING OF MATERIALS**

Tests and Inspections. The City will employ and pay for the services of an approved testing laboratory to perform specified services for the field testing of:

- (a) Soil Compaction Control
- (b) Cast-in-Place Concrete
- (c) Asphalt Concrete Pavement

The Contractor shall perform, or arrange for the performance, and pay all costs in connection therewith, all other tests and inspections required by the Contract documents. The Contractor shall pay for all testing laboratory services in connection with tests verifying conformance of proposed materials and installation with project requirements including, but not limited to, mix designs, riprap, gradation tests for embedment, fill and backfill materials. The City shall pay for testing laboratory services in connection with tests on materials after incorporation into the project, unless retesting of materials is necessary because of the failure of the materials to meet the Project requirements. The Contractor shall obtain the City's written acceptance of the testing laboratory before having services performed.

### **(a) Requirements for Independent Testing Consultants.**

1. Consultants shall comply with "Recommended Requirements for Independent Laboratory Qualifications", latest edition, published by the American Council of Independent Laboratories, and basic requirements of ASTM E-329, "Standards of Recommended Practice for Inspection and Testing Agencies for Concrete, Steel, and Bituminous Materials as Used in Construction", latest edition.
2. The Contractor shall submit to the City for prior approval, the name and address of the proposed testing laboratory with description of personnel, facilities, equipment and other qualification data, including certificate of calibration of applicable testing equipment made by an accredited calibrated agency no more than twelve (12) months prior to submittal date.

### **(b) Test Reports**

1. Testing agency shall be instructed to submit directly to the City three (3) copies of all reports of tests or inspections made, showing compliance, irregularities or deficiencies, identifying Project, date of test, location in Project, applicable specification section, applicable standard(s) for compliance, observations relating to compliance, name and signature of inspector.

(c) Contractor Responsibilities

1. Furnish access to the work, materials, equipment and labor required to accommodate inspections and tests when testing laboratory is retained by the City. In the event retesting of materials or recompaction is necessary because of the failure of the materials or compaction to meet the Project requirements, the cost of said retesting shall be borne by the Contractor. Cost of said retest will be deducted from the final payment amount due the Contractor, or invoiced directly to the Contractor at the City's discretion.

(d) Reliance on Technical Data

Without warranty or representation as to the accuracy or completeness of any information or data, Contractor may rely upon the general accuracy of the "technical data" contained in the reports, specifications and drawings. The "technical data" is identified in the work technical specifications, drawings and reports that are signed and sealed by a registered Professional Engineer, Architect or Landscape Architect in the State of Colorado. Except for the reliance on the general accuracy of the "technical data," Contractor may not rely upon or make any claim against the City with respect to:

1. the accuracy or completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions, and information contained in the reports or shown or indicated in such drawings; or
3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

Contractor understands that this is a firm fixed price contract and so long as there are no changes in the scope of work or unanticipated circumstances as provided in subsection A-C below, Contractor must deliver the project for the agreed price. The parties agree that not every circumstance can be anticipated or known at the time this Contract was executed. Compensation for unanticipated circumstances, limited to subsections A –C, shall, at the City's sole discretion, be provided by the following method(s): (1) Unit prices previously approved; (2) allowing additional compensation on a time and materials method, not to exceed an agreed-to amount; (3) an agreed lump sum; and/or (4) the actual cost of:

- (a) labor (including foreman and additional supervision, if necessary);
- (b) materials necessary for incorporation into the Project;
- (c) rental cost of construction plant and equipment used for work;
- (d) Power and fuel required for operation of power equipment necessary to perform work;
- (e) Contractor shall provide to the City physical evidence of all costs, including, but limited to, payroll, invoices, vouchers, estimates, bills, accounting records, or other relevant records. Contractor agrees that its failure to provide evidence of a claimed cost shall be a waiver of such cost(s) and the City shall be released and forever discharged from any claim of any kind whatsoever, loss, damages, request for equitable adjustment, or demand related thereto. Contractor further agrees that, at the City's discretion, a fixed fee, not to exceed 10% of the costs of work shall be added to such costs as compensation for the cost of management, insurance, benefits, bond, profit, and any other expenses.

To the extent unanticipated circumstances arise, Contractor shall follow the procedures and processes set forth herein and, if applicable, the Dispute Resolution provisions of this Contract. Contractor agrees that its failure to follow the processes set forth herein and the Dispute Resolution process shall forever waive, release, and discharge the City from any claim of any kind whatsoever, damages, losses, lawsuits, or demands known or unknown. Additionally, the terms "detail" or "particularity" mean specificity, providing the exact basis and reason therefor with citations to the Contract or Contract Documents. Vague or ambiguous references such as "other matters" or "other costs" shall not be permitted and are not subject to any compensation method whatsoever.

A. Differing Site Conditions or Changed Conditions: A differing site condition or changed condition means subsurface, latent, or unknown physical site conditions that are materially different than that which is indicated in the contract and which is not ordinarily encountered and generally recognized in the work provided for in the Contract.

Contractor understands the City must be permitted the opportunity to timely investigate all differing site/changed condition matters; document conditions as they existed on the site at the time; take measurements, photographs, witness statements and the like; negotiate a compromise resolution with the Contractor and/or subcontractors; and avoid the cost, expense and delay of formal litigation.

Upon discovering a differing site condition, the Contractor shall not disturb the conditions and immediately contact the Project Manager. Within five days of discovering the condition, the Contractor shall provide written notice to the Project Manager of the condition. The written notice shall describe the condition with particularity; provide the precise material difference of the condition from the Contract, design plans, and/or other Contract Documents; describe, in detail, how the condition is not a condition that would be ordinarily encountered and generally recognized in the work provided for in the Contract; and provide a detailed explanation, including all accounting and other evidence supporting, Contractor's losses, costs, delays, and changes in time required for performing the work. Contractor agrees that any claim, loss, damage, delay, or change in time that is not supported by evidence shall be disallowed. Contractor waives and forever releases and discharges the City from any claim of whatsoever kind, loss, damages, demand, and/or request for equitable adjustment whether known or unknown by disturbing the condition before notifying the Project Manager and by failing to provide timely detailed written notice as required herein. Any issue which is not provided for, in detail, in the written notice shall also be waived and the City shall be forever released and discharged from any claim whatsoever, loss, damage, or request for equitable adjustment, or demand arising therefrom.

After Contractor fully complies with the provisions in this section and after receiving the written notice, the Project Manager shall promptly investigate the condition and determine whether such condition materially differs from that indicated in the Contract Documents and whether it is a condition that would not ordinarily be encountered and generally recognized in the work provided for in the Contract. If the Project Manager determines the condition is a "differing site condition," then a Change Order shall be issued describing the differing site condition and compensation method agreed to by the parties. By signing the Change Order, Contractor agrees the City shall be released and fully discharged from any claim whatsoever, loss, damage, request for equitable adjustment, or demand arising from the matters described in the Change Order. The parties shall also sign a document which describes in detail each condition and each claim, loss, damage, delay, or change in time related to that particular condition which was agreed to and fully resolved as well as any condition and each claim loss, damage, delay, or change in time related to that particular condition which is disputed.

If the Contractor disputes, disagrees with, or otherwise considers unfair any decision or ruling by the City, then Contractor shall, within 10 Calendar Days, provide the City with written notice of the dispute as set forth in the dispute section of this Contract and shall follow the dispute resolution process provided therein.

B. Defective or Deficient Construction Plans or Documents: A defective or deficient construction plan or document means a material error, mistake, oversight, or omission in the design plans or documents providing the specifications depicting the general and detail features of the work to be performed.

Upon discovering a defect or deficiency, the Contractor shall immediately contact the Project Manager. Within five days of initially advising the Project Manager of the defect or deficiency, the Contractor shall provide written notice to the Project Manager. The written notice shall describe the defect or deficiency with particularity explaining why it is a material defect or deficiency; provide precise detail explaining why the defect or deficiency is not something Contractor should know how to do or why the defect or deficiency is not a condition that would be ordinarily encountered and generally recognized in the work provided for in the Contract; and provide a detailed explanation, including all accounting and other evidence supporting, Contractor's losses, costs, delays, and changes in time required for performing the work. Contractor agrees that any claim, loss, damage, delay, or change in time that is not supported by evidence shall be disallowed. Contractor agrees that it shall waive and forever release and discharge the City from any claim of whatsoever kind, loss, damages, demand, and/or request for equitable adjustment whether known or unknown by failing to immediately notifying the Project Manager and by failing to provide timely detailed written notice as required herein. Any issue which is not provided for in the written notice shall also be waived and the City shall be forever released and discharged from any claim whatsoever, loss, damage, or request for equitable adjustment, or demand arising therefrom.

After Contractor fully complies with the provisions in this section and after receiving the written notice, the Project Manager shall promptly investigate the condition and determine whether such matter is a "defective or deficient design plan or document" as defined herein. If the Project Manager determines the matter is a "defective or deficient design plan or document," then a Change Order shall be issued describing the defective or deficient design plan or document, the correction and compensation method agreed to by the parties. By signing the Change Order, Contractor agrees the City shall be released and fully discharged from any claim whatsoever, loss, damage, request for equitable adjustment, or

demand arising from the matters described in the change order. The parties shall also sign Form A of this Contract which describes in detail each condition and each claim, loss, damage, delay, or change in time related to that particular condition which was agreed to and fully resolved as well as any condition and each claim loss, damage, delay, or change in time related to that particular condition which is disputed.

If Contractor disputes, disagrees with, or otherwise considers unfair any decision or ruling by the City, then Contractor shall, within 10 Calendar Days, provide the City with written notice of the dispute as set forth in the Dispute Resolution section of this Contract and shall follow the dispute resolution process provided therein.

C. Changes in Work and Additional/Extra Work (fixed price contract): When additional information through excavation, testing, site investigation, differing site conditions, or otherwise is obtained the City shall have the right to alter, change the location, re-design, change the work, add to the work, accelerate work, or reduce work, change the method or manner of performance, change services, and/or change materials described in the Contract (collectively "Changed Work").

If the City changes work, then a Change Order shall be issued by the Project Manager. Contractor shall not be required to perform any Changed Work without a Change Order issued by the Project Manager. Such Changed Work shall be performed under the terms set forth in the original Contract and compensated as agreed in this section of the Contract.

If Contractor disputes any Changed Work or compensation method for such Changed Work requested by the City or set forth in a Change Order, Contractor shall, without delay, perform such work. Within 10 Calendar Days of receiving the Change Order, Contractor shall provide the City with written notice of the dispute as set forth in the Dispute Resolution section of this Contract and shall follow the dispute resolution process provided therein. Contractor further agrees that any issue not provided for, in detail, in the written notice shall also be waived and the City shall be forever released and discharged from any claim whatsoever, loss, damage, or request for equitable adjustment, or demand arising therefrom. Any matter resolved through the Dispute Resolution process shall be set forth in Form A of this Contract which describes in detail each Changed Work, including the compensation method, which was agreed to and fully resolved. By signing Form A, Contractor agrees that the City shall be released and fully discharged from any claim whatsoever, loss, damage, request for equitable adjustment, or demand arising from the matters described in Form A.



If Contractor does not dispute any Changed Work or the compensation method for such work, then Contractor shall sign the Change Order and agrees that the City shall be released and fully discharged from any claim whatsoever, loss, damage, request for equitable adjustment, or demand arising from the matters described in the Change Order.

Contractor agrees that the Project Manager shall have the authority to make minor changes in the work which do not involve additional costs and are not inconsistent with the purpose and scope of the work.

If the City finds it necessary or advisable, the City may omit, increase, or decrease any items as it may deem necessary or desirable without changing the unit prices in the proposal, provided such increase or decrease does not exceed 15% of the total monetary value of the original Contract. If material or labor involved in such change is not included in the unit prices of the Contract, but forms an inseparable part of the work to be done under this Contract, and the delay involved in asking for the bids or proposals and the letting of a new contract therefore might result in damage, injury, or impairment of the plant, work system, or other property belonging to the City, the City may in its discretion declare an emergency and require Contractor to proceed with such alterations and additions. The Contract shall not be required to perform such work or furnish extra materials without a Change Order issued by the Project Manager.

## **107.28 DISPUTE RESOLUTION**

Mindful of the high cost of litigation, not only in dollars, but also in time and energy, the parties intend to and do hereby establish the following out-of-court alternate dispute resolution procedure to be followed in the event any dispute, claim of any kind, loss, damage, demand, request for equitable adjustment, or controversy should arise out of, or relating to this Contract or relating to any Change Order or other changes or addendums to this Contract. During the dispute resolution procedure provided in this section, Contract shall continue to perform the work as provided for in this Contract as modified by any Change Order or Contract amendment. Nothing in this section precludes the parties from pursuing any other remedy afforded by the laws of the State of Colorado once the remedies afforded under this Contract have been complied with and exhausted.

A. Disputes Arising from Unanticipated Circumstances: If Contractor disputes, disagrees with, or considers any decision, order, ruling, demand, request, directive, Change Order, or Contract amendment, related to the Unanticipated Circumstances provision of this Contract, and issued by the City, whether verbally or in writing, then Contractor shall:

1. Within 10 days of the City issuing any written or verbal decision, order, ruling, demand, request, directive, Change Order, or Contract

amendment, Contractor shall provide written notice to the Project Manager identifying, with specific detail, each disputed matter. Any Unanticipated Circumstance dispute or matter of any kind or nature whatsoever, which Contractor does not identify in detail shall be waived and the City is released and fully discharged from any claim whatsoever, loss, damage, request for equitable adjustment, or demand arising from any matter not explicitly set forth in the written notice and described in detail;

2. Contractor shall provide to the City all evidence of any claim of whatsoever kind, loss, damages, delay cost, or other costs, including, but not limited to payroll reports, daily logs, invoices, accounting file, receipts, email, or other relevant record or document. Any item claimed by Contractor shall be supported by verifiable evidence described herein. If Contractor requires additional time to obtain or compile such evidence, then the Contractor shall have an additional 30 days, but must identify the exact document(s) or other evidence needed, where it is maintained, and explain why it is not available. The City shall not be responsible for any delay or other damage arising from Contractor's request for additional time to obtain documents. Any item unsupported by verifiable evidence shall be waived and Contractor agrees to release and fully discharge the City from any claim of whatsoever kind, loss, damage, request for equitable adjustment, or demand related to such unsupported item.
3. Upon receipt of Contractor's written notice, the Project Manager will investigate the disputed matter(s) and issue a written decision, ruling, order, and/or directive to Contractor. If Contractor does not dispute the Project Manager's decision, ruling, order, or directive, or a compromise has been reached, then Contractor shall sign Form A. If Contractor disputes or disagrees with the Project Manager's Ruling, then within 20 days of receiving the Project Manager's decision, ruling, order, and/or directive, Contractor must file with the City a written request for review to the City Engineer or City's Manager of the Procurement Services Division. The written request for review shall (a) state in detail the exact issue raised to the Project Manager and the issue(s) related to those matters raised to be reviewed by the City Engineer or Procurement Services Manager; (b) provide an analysis, detailing the basis, reason therefor and the how and why Contractor disagrees with the Project Manager's decision, ruling, order, or directive; and (c) attach all evidence supporting Contractor's dispute. If Contractor fails to provide a timely written request for review to the City Engineer or Procurement Services Manager, then Contractor agrees that it waives, releases, and forever discharges the City from any claim of whatsoever kind, loss, damage, request for equitable adjustment, or demand arising from or related to the Project Manager's decision, ruling, order, or directive.

4. The City Engineer's or Procurement Services Manager's decision shall be final and conclusive for the City of Colorado Springs. If Contractor disputes, disagrees with, or considers such decision unfair, then Contractor shall be free to pursue any other remedy afforded by the laws of the State of Colorado. If Contractor does not dispute the City Engineer's or Procurement Services Manager's decision, ruling, order, or directive or a compromise is reached, then Contractor shall sign Form A.
  5. Contractor shall pay the City reasonable attorney's fees and costs associated with its failure to comply with any part of this alternate dispute process.
- B. All Other Claims: If a dispute, disagreement, or controversy of any kind, other than those covered in the Unanticipated Circumstances section of this Contract, arises from or is related to the Contract, shall be resolved under the Disputes section in the Contract.

#### **107.29 REMOVAL AND SUSPENSION FOR DEFECTIVE WORK**

All work or material which has been rejected shall be remedied or removed and replaced in an acceptable manner. Additional compensation will not be allowed for such removal and replacement. Any work done beyond the lines and grades shown on the drawings, except as herein provided, will be considered as unauthorized and will not be measured or paid for. Work so done may be ordered removed at the Contractor's expense. Should the Contractor fail to comply promptly with any order of the Project Manager made under the provisions of this paragraph, the Project Manager shall have the authority to cause said work to be removed and to deduct the cost from any money due, or to become due, from the Contractor. At any time during the course of construction of this project if the provisions of the Plans, Specifications, or Contract provisions are being violated by the Contractor or his employees, the Project Manager shall have the right and authority to order all construction to cease or material to be removed, until arrangements satisfactory to the Project Manager are made by the Contractor for resumption of the work in compliance with the provisions of the Contract.

The Contractor shall promptly remove from the premises all materials and work rejected by the Project Manager as failing to meet Contract requirements, whether incorporated in the work or not, and the Contractor shall promptly replace and re-execute Contractor's own work in accordance with the Contract and without expense to the City and shall bear the expense of making good all work of other Contractors destroyed or damaged by such removal or replacement.

All removal and replacement work shall be done at the Contractor's expense. If the Contractor does not take action to remove such rejected work and materials

within ten (10) days' time thereafter, the City may, upon ten (10) days written notice, sell such materials at auction or at private sale and retain the proceeds without compensation to the Contractor.

### **107.30        CLEANING UP AND FINAL INSPECTION**

The Contractor shall at the completion of the work, remove all rubbish from and about the work and all tools, equipment, scaffolding, and surplus materials and shall leave the work clean and ready for use. If not completed by Contractor, the City may remove the rubbish and surplus materials and charge the cost to the Contractor.

All sewers, conduits, pipes, and appurtenances and all tanks, pump wells, chambers, buildings, and other structures shall be kept clean during construction and as the work or any part thereof approaches completion, the Contractor shall systematically and thoroughly clean and make any needed repairs to them. Contractor shall furnish at Contractor's own expense, suitable tools and labor for removing all water and cleaning out all dirt, mortar, and foreign substances. Any undue leakage of water into the structures such as to make the work, in the opinion of the Project Manager, fall short of first class work, shall be promptly corrected by the Contractor at Contractor's own expense.

Cleaning and repairs shall be arranged, so far as practicable, to be completed upon finishing the construction work. Notice to begin the final cleaning, and repairing, if such is needed, will be given by the Project Manager, who at the same time will make his final inspection of the work. The Project Manager will not approve the final estimate of any portion of the work until after the final inspection is made and the work is found to be satisfactory.

### **107.31        CUTTING AND PATCHING**

The Contractor shall do all cutting, fitting, or patching of work that may be required to make its several parts fit together or to receive the work of other contractors shown upon, or reasonably implied by the Plans and Specifications for the completed Project.

Cold or wet weather conditions that do not permit a permanent asphalt pavement replacement will require a minimum 2" bituminous pavement patch prior to opening the area to traffic as a temporary measure until the permanent asphalt pavement replacement can be installed. This item shall be incidental to any work requiring such removal of asphalt and will be considered to be included in the unit price of the related item of work.

Any cost caused by defective or ill-timed work shall be borne by the Contractor.

The Contractor shall not endanger any work by cutting, digging, or otherwise and shall not cut or alter the work of any other Contractor without the consent of the Project Manager.

#### **107.32 FINAL TESTS**

After completion of the work, the Contractor shall make any and all tests required by the Specifications or by municipal, state, or federal regulations, and where so provided in said regulations shall furnish the City with certificates of inspection by the applicable regulatory bodies. The Contractor shall also make all tests required by the National Board of Fire Underwriters for the purpose of determining insurance rates or other protection of the City or the public.

#### **107.33 CORRECTION OF WORK AFTER FINAL PAYMENT**

Neither the final payment nor any provision in the Contract Documents shall relieve the Contractor of the responsibility for negligence or faulty materials or workmanship within the extent and periods provided by law and by this Contract.

#### **107.34 NO WAIVER OF LEGAL RIGHTS**

Upon written notice that the Contractor considers all work complete, the Project Manager will make a pre-final inspection with the Contractor and will notify the Contractor in writing of incomplete or defective work revealed by the inspection. The Contractor shall promptly remedy such deficiencies.

After the Contractor has remedied all deficiencies to the satisfaction of the Project Manager and delivered all construction records including record drawings, maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection and other documents (all as required by the Contract Documents), the Contractor will be promptly issued a Certificate of Completion by the Project Manager stating that the work is acceptable.

Upon completion of the Contract, the City will make final inspection and notify the Contractor of acceptance. Final acceptance shall not preclude the City from correcting any measurement, estimate, or certificate made before or after completion of the Contract, nor from recovering from the Contractor or Surety, or both, overpayments sustained because the Contractor failed to fulfill the obligations under the Contract.

The Contractor shall be liable to the City for latent defects, fraud, or such mistakes as may amount to fraud, or as regards the City's rights under any warranty or guarantee.

For all non-federally funded projects, the following additional requirements shall apply:

- (a) All work shall be constructed in compliance with standard construction codes, and all materials and workmanship must be guaranteed for a period of two years from the date of final acceptance. If any defect in the work in violation of the foregoing warranty arises, Contractor shall, upon receipt of written notice of such defect, promptly furnish, at no cost to the City, design and engineering, labor, equipment, and materials necessary to correct such defect and cause the Work to comply fully with the foregoing warranty and Contract Documents. This obligation shall survive both final completion of and final payment for the Work. The City shall not be invoiced for any of costs of warranty work, and Contractor shall not be entitled to submit any claim for an increased fee arising therefrom. The Contractor guarantee period (two-year warranty period) will not begin until the Contract is 100 percent complete, as determined by the Project Manager. Acceptance of the 100 percent complete work shall be requested in writing by the Contractor. Any item requiring repair and/or replacement prior to expiration of the two-year warranty period shall be guaranteed for a period of one-year after the date of said correction or repair or for the remainder of the two-year warranty period, whichever is longer.
- (b) In placing orders for equipment, the Contractor shall purchase such equipment only under a written guarantee from the respective manufacturers that the equipment supplied will function satisfactorily as an integral part of the completed Project in accordance with the Plans and Specifications. Furthermore, the Contractor shall require that the manufacturer agree in writing at the time an order of equipment is placed that manufacturer will be responsible for the proper functioning of the equipment in cooperation with the Contractor, and that whenever necessary during the installation period or tuning up period following construction period, the manufacturer will supply without additional cost to the City, such superintendence and mechanical labor and any adjustments and additional parts and labor needed to make the equipment function satisfactorily, even if the same was not shown on approved shop drawings.

## **107.35 ACCEPTANCE**

- (a) *Partial Acceptance.* If, during the performance of the project, the Contractor satisfactorily completes a unit or portion of the Project, such as a structure, an interchange, or a section of road or pavement that can be used advantageously for traffic, the Project Manager may make final inspection of that unit. If the Project Manager finds that the unit has been satisfactorily completed in compliance with the Contract, the Contractor may be relieved of further responsibility for that unit except as otherwise

provided in these general provisions. Partial acceptance shall not void or alter any of the terms of the Contract.

(b) *Final Acceptance.* Upon notice from the Contractor of presumptive completion of the entire Project, the Project Manager will make an inspection. If the work provided for by the Contract has been satisfactorily completed, that inspection shall constitute the final inspection and the Project Manager will notify the Contractor in writing of final acceptance indicating the date on which the Project was inspected and accepted.

If the inspection discloses any unsatisfactory work, the Project Manager will give the Contractor a written list of the work needing correction. Upon correction of the work, another inspection will be made. If the work has been satisfactorily completed, the Project Manager will notify the Contractor in writing of the date of final inspection and acceptance. Final acceptance under this subsection does not waive any legal rights contained in the No Waiver of Legal Rights section of this Contract.

## **SECTION 108      PAYMENTS AND ACCEPTANCE OF WORK**

### **108.00      PAYMENTS AND RETAINAGE**

Payments will be made, and required retainage withheld if applicable, in accordance with this section as the work progresses at the end of each month or as soon thereafter as practicable in compliance with C.R.S. Title 24, Article 91, on statements made and approved by the Project Manager. In preparing statements, only completed work will be taken into consideration. No payment will be made for materials in storage and/or delivered to the site, unless otherwise approved by the City.

Payment for work performed by the Contractor under the Contract Documents will be made at the approved unit price or lump sum price for each of the several items as listed in the proposal and measured as hereinafter specified. Such payment shall compensate the Contractor for all costs in connection with furnishing all labor, equipment and material required and performing the operations necessary to complete the item in accordance with the Contract Documents. All incidental work essential to the completion of the Project in a workmanlike manner, and including cleanup and disposal of waste or surplus material, shall be accomplished by the Contractor without additional cost to the City. The cleanup and disposal of waste or surplus material shall be performed during construction or as soon after as is reasonably possible in order to better maintain the aesthetics and safety of the construction area. Payment will be made for the actual quantities constructed or installed, unless otherwise noted in these Contract Documents. However, any changes to plan quantity must be approved through proper Change Order procedures, said quantities being measured as specified in the Contract Documents.

- (1) If the Contract exceeds one hundred fifty thousand dollars (\$150,000.00), and is for the construction, alteration, or repair of any highway, public work, or public improvement, structure, and the Contractor has provided Performance and Payment Bonds: the City shall authorize partial progress payments of the amount due under this Contract monthly, or as soon thereafter as practicable, to the Contractor, if the Contractor is satisfactorily performing the Contract. If the City finds that satisfactory progress is being achieved during any period for which progress is to be made, the City may authorize payment to be made in full without withholding retainage. However, if satisfactory progress has not been made, the City may retain a maximum of ten percent (10%) of the amount of the requested payment until satisfactory progress is achieved. When the work is substantially complete, the City may retain from the remaining unpaid balance that amount the City Procurement Services Manager, at the advice of the Project Manager, considers adequate for protection of the City, suppliers, subcontractors, laborers, vendors, etc., provided that such retainage shall not exceed five percent (5%) of the amount due, and shall release to the Contractor all the remaining funds associated with completed and acceptable work.

If satisfactory progress has not been made the withheld percentage of the Contract price of any such work, improvement, or construction shall be retained on an invoice-to-invoice basis and shall not be cumulative. In other words, if the Contractor is not performing satisfactorily the City will hold ten percent (10%) of what is actually due to the Contractor. For example, if the Contractor is behind schedule and has successfully completed fifty percent (50%) of the work, the City will only pay forty percent (40%) of the invoice, withholding ten percent (10%) of what is due until the Contractor gets back on schedule.

- (2) Whenever a Contractor receives payment pursuant to this section, the Contractor shall make payments to each of the subcontractors of any amount actually received which were included in the Contractor's request for payment to the City for such subcontracts. The Contractor shall make such payments within seven (7) Calendar Days of receipt of payments from the City in the same manner as the City is required to pay the Contractor under this section if the subcontractor is satisfactorily performing under the Contract with the Contractor. The subcontractor shall pay all suppliers, sub-subcontractors, laborers, and any other persons who provide goods, materials, labor, or equipment to the subcontractor any amounts actually received which were included in the subcontractor's request for payment to the Contractor for such persons, in the same manner set forth in this subsection (2) regarding payments by the Contractor to the subcontractor. If the subcontractor fails to make such payments in the required manner, the subcontractor shall pay those



suppliers, sub-subcontractors, and laborers interest in the same manner set forth in this subsection (2) regarding payments by the Contractor to the subcontractor.

At the time a subcontractor submits a request for payment to the Contractor, the subcontractor shall also submit to the Contractor a list of the subcontractor's suppliers, sub-subcontractors and laborers. The Contractor shall be relieved of the requirements of this subsection (2) regarding payment in seven (7) days and interest payment until the subcontractor submits such list. If the Contractor fails to make timely payments to the subcontractor as required by this section, the Contractor shall pay the subcontractor interest as specified by Contract or at the rate of fifteen percent (15%) per annum, whichever is higher, on the amount of the payment which was not made in a timely manner. The interest shall accrue for the period from the required payment date to the date on which payment is made. Nothing in this subsection (2) shall be construed to affect the retention provisions of any Contract.

- (3) If the Contractor is not progressing in accordance with the Project Schedule or not performing quality work in accordance with the specifications, the City Procurement Services Manager, at the advice of the Project Manager may withholding retainage up to and including ten percent (10%) of the total contract amount.

#### **108.01      PAYMENTS WITHHELD PRIOR TO FINAL ACCEPTANCE OF WORK**

The City may withhold or nullify the whole or part of any certificate of payment to such extent as may be necessary to protect it from loss caused by:

- (a) Defective work not remedied.
- (b) Claims filed or reasonable evidence indicating probable filing of claims by other parties against the Contractor.
- (c) Failure of the Contractor to make payments properly to subcontractors or for material or labor.
- (d) Damage to another contractor.

When the above grounds are removed, payment will be made for amounts withheld because of them.

#### **108.02      ACCEPTANCE OF FINAL PAYMENT**

If the work is finally accepted by Project Manager under the terms and conditions of the Contract the entire balance found by the Project Manager to be due the

Contractor, including the retained percentage, less any retention based on; (1) the Project Manager's estimate of the fair value of the claims against the Contractor; and (2) the cost of completing the incomplete or unsatisfactory items of work with specified amounts for each incomplete or defective item of work; and (3) retentions required by law, shall be due and payable to the Contractor. The date of completion is the date as specified in the Certificate of Completion issued by the Project Manager.

Upon completion of the work under the Contract and before the Contractor will receive or be paid for the Project Manager's final statement, the City Procurement Services Division shall post a notice in the Colorado Springs Gazette that the City has accepted such work as completed according to the Plans and Specifications and rules set forth in the Contract; that the Contractor is entitled to final settlement; that after the date specified in the Notice, the City will pay the full balance due under the Contract; and that persons having claims for labor or material furnished the Contractor must present their claim to the City Procurement Services Division prior to the date specified for such payment. Nothing herein shall be construed as relieving the Contractor and the Sureties on the Contractor's bonds from any claim or claims for work or labor done or materials or supplies furnished in the execution of the Contract.

The making and acceptance of the final payment shall constitute a waiver of all claims by the Contractor against the City.

If, after the work has been substantially completed, full completion thereof is materially delayed through no fault of the Contractor, and the Project Manager so certifies, the City may, upon Certificate of Completion by the Project Manager, and without terminating the Contract, make payment of the balance due for that portion of the work fully completed and accepted. Such payment shall be made under the terms and conditions governing final payment, and acceptance of the payment shall constitute a waiver of all claims by the Contractor but acceptance of the work shall not constitute a waiver of City claims against the Contractor.

Advertising for Final Payment and processing of the Final Pay Request shall not take place until after the Contractor has submitted Sales and Use Tax Forms to the City and said forms have been reviewed and approved by the City Sales Tax Office.